

Adopted at Meeting of 7/28/83

RESOLUTION OF THE BOSTON REDEVELOPMENT AUTHORITY

RE: FINAL DESIGNATION OF REDEVELOPER
DISPOSITION PARCEL D-10 IN THE
DOWNTOWN WATERFRONT-FANEUIL HALL
URBAN RENEWAL AREA PROJECT NO. MASS. R-77

WHEREAS, the Boston Redevelopment Authority, (hereinafter referred to as the "Authority"), has entered into a contract for loan and capital grant with the Federal Government under Title I of the Housing Act of 1949, as amended, which contract provides for financial assistance in the hereinafter identified Project; and

WHEREAS, the Urban Renewal Plan for the Waterfront Urban Renewal Area, Project No. Mass. R-77, (hereinafter referred to as the "Project Area"), has been duly reviewed and approved in full compliance with local, State and Federal law; and

WHEREAS, the Authority is cognizant of the conditions that are imposed in the undertaking and carrying out of urban renewal projects with Federal financial assistance under said Title I, including those prohibiting discrimination because of race, color, sex, religion or national origin; and

WHEREAS, Marketplace Center Limited Partnership has expressed an interest in and has submitted a satisfactory proposal for the development of Disposition Parcel D-10 in the Waterfront Urban Renewal Area; and

WHEREAS, the Authority is cognizant of Chapter 30, Section 61 and 62 of the Massachusetts General Laws, as amended, with respect to minimizing and preventing damage to the environment:

NOW, THEREFORE, BE IT RESOLVED BY THE BOSTON REDEVELOPMENT AUTHORITY:

1. That Marketplace Center Limited Partnership, be and hereby is finally designated as redeveloper of Disposition Parcel D-10 in the Downtown Waterfront-Faneuil Hall Urban Renewal Area.
2. That it is hereby determined that Marketplace Center Limited Partnership possesses the qualifications and financial resources necessary to lease and develop the land in accordance with the Urban Renewal Plan for the Project Area.
3. That disposal of said parcel by negotiation is the appropriate method of making the land available for redevelopment.

MEMORANDUM

JULY 28, 1983

TO: BOSTON REDEVELOPMENT AUTHORITY

FROM: ROBERT J. RYAN, DIRECTOR

SUBJECT: WATERFRONT PROJECT, MASS. R-77
FINAL DESIGNATION OF MARKETPLACE CENTER LIMITED PARTNERSHIP
AS DEVELOPER OF PARCEL D-10

On January 21, 1982, the Authority tentatively designated Marketplace Center as developer of Parcel D-10 at Commercial and State Streets in the Downtown Waterfront Urban Renewal Area.

On January 6, 1983, the Authority authorized the Director to execute a Lease Commencement Agreement concerning the disposition of the parcel to the developer.

The developer has now submitted final architectural plans and specifications which have been reviewed and approved by the Authority staff. As a result of extensive negotiations between the developer and staff, the proposed development has been scaled down to satisfy urban design and environmental concerns.

The development now consists of approximately 270,000 net square feet of office space; 64,000 net square feet of retail space including arcades and a museum; parking for 123 cars in an underground garage; and the restoration of the "Walk-to-the-Sea", a major pedestrian spine which runs from City Hall Plaza to the Waterfront Park, cutting across the parcel, which will remain open to the public.

The building will be a distinguished work of architecture which has a strong individual identity and a compatible neighbor which does not overpower its historic surroundings. The principal materials are granite and glass, with the granite to be of the same color range as that used in the surrounding historic buildings. The pitched roof of the office element reinforces the linearity of the "Walk-to-the-Sea" by recalling the roofs of the Market buildings and the Long Wharf Hotel.

Pedestrian arcades, enlivened by retail uses, occur along Commercial and State Streets, as well as ringing the "Excedra" on the "Walk-to-the-Sea".

4. That the Final Working Drawings and Specifications submitted by Marketplace Center Limited Partnership for the redevelopment of Parcel D-10 conform in all respects to the Urban Renewal Plan for the Project Area and that said Final Working Drawings and Specifications be and hereby are approved.
5. That it is hereby found and determined that the proposed development will not result in significant damage to or impairment of the environment and further, that all practicable and feasible means and measures have been taken and are being utilized to avoid or minimize damage to the environment. More specific findings concerning the environmental impact of the Project are attached hereto as Exhibit A and are incorporated herein by reference.
6. That the Director be and is hereby authorized on behalf of the Authority to execute a lease agreement with Marketplace Center Limited Partnership for Disposition Parcel D-10 said lease agreement to be substantially in accordance with the form as attached and to incorporate any change he deems necessary to effectuate the development and to execute any other appropriate documents that may be necessary for the lease transfer.
7. That the Director is hereby authorized to execute an amendment to the License Agreement for early entry on the site by Marketplace Center Limited Partnership to commence excavation, foundation and site preparation work.
8. That the Director is hereby authorized to execute the appropriate documents acknowledging the change in the Faneuil Hall Marketplace Inc. (The Rouse Co.) trash compactor area.
9. That the Director is hereby authorized to execute an amendment to the Lease Commencement Agreement and the appropriate attachments which would adjust the monthly rental payment to the Authority from \$150,000 to \$116,000.
10. That the Director is hereby authorized to issue a license to Faneuil Hall Marketplace Inc. for the temporary use of a sliver parcel of 876 square feet behind burned-out Sanborn Building for incidental storage purposes until a permanent trash compactor and storage facility is completed in the new building.
11. That the Secretary is hereby authorized and directed to publish notice of the proposed disposal transaction in accordance with Section 105 (E) of the Housing Act of 1949, as amended, including information with respect to the "Redeveloper's Statement For Public Disclosure."

July 28, 1983

A large, semi-circular "Excedra" ringed by a classical colonnade will form an activity node on the "Walk-to-the-Sea". This pedestrian spine will then pass beneath a glass canopy and then under the Central Artery structure where Marketplace Center Limited Partnership has proposed an illuminated overhead canopy and has agreed to repave, with brick, the Walkway as it continues to the Waterfront Park.

Marketplace Center Limited Partnership will also extend its site work across Commercial Street which will become a limited access service road between Chatham Street and Clinton Street. Through the use of paving, lighting and landscaping, there will be an uninterrupted visual and pedestrian flow between Marketplace Center and the Faneuil Hall Market area.

Loading and service areas are completely enclosed within the building and include trash handling and storage facilities for the Faneuil Hall Markets as well as Marketplace Center itself.

The overall development will include a 16 story, first-class office building whose address will be 200 State Street, together with two levels of retail uses which will complement and complete the Faneuil Hall Markets, and a third level of office space like the Faneuil Hall Markets. A "Museum of Boston" is also planned and will be directly accessible from the "Walk-to-the-Sea" which continues through Marketplace Center to the waterfront itself.

Final commitments for construction financing and post-construction financing have been made by Citicorp Real Estate, Inc., a subsidiary of Citicorp. WZMH Group, Inc. is the architect. The Gilbane Building Company will be the construction contractor for the developer.

Marketplace Center Limited Partnership will be composed of James F. Sullivan and Marketplace Center, Inc., a corporation wholly owned by James F. Sullivan, which together will hold a 75% interest in the partnership and a limited partnership entity formed by General Investment and Development Company which will hold a 25% interest.

One of the major challenges in the development of the parcel is the relocation and accommodation of an existing facility located in a building in the northerly portion of the parcel containing trash compactor units, air conditioning compressor, and storage areas which service the Markets and are owned and operated by the Markets' developer, Faneuil Hall Marketplace, Inc. (The Rouse Company) under a lease with the Authority. Marketplace Center Limited Partnership has agreed to carry out excavation, foundation, and building construction work on the site in a manner that will permit the continued operation of the trash compactor on a portion of its present site until a permanent location is made available in the southeast section of the rear of the new building. In order to carry out this arrangement, it is recommended that the Director be authorized to execute the appropriate documents acknowledging the change in the Rouse Company trash compactor area.

It is also recommended that the Director be authorized to issue a license to Faneuil Hall Marketplace, Inc. for the temporary use of a sliver parcel of 876 square feet, owned by the Authority, behind the burned-out Sanborn Building, for incidental storage purposes until a permanent trash compactor and storage facility is completed in the new building.

It is further recommended that the Director be authorized to amend the existing early entry license previously issued to the developer for the purpose of allowing early entry to the parcel to commence excavation, foundation, and site preparation work.

It is also recommended that the Director be authorized to execute an amendment to the lease Commencement Agreement and the appropriate attachments which would adjust the monthly base rental payment to the Authority from \$150,000 to \$116,700. The lease adjustment reflects a pro rata reduction in building height and the corresponding elimination of five floors of office space and the corresponding reduction in the total floor area of the building of 59,820 net square feet brought about as a result of extensive urban design and environmental reviews.

Finally, it is noteworthy to quote in part the following statement from the Secretary of Environmental Affairs in his letter approving the project:

"The principal concern during review of the Marketplace Center Supplement Draft EIR centered on the adverse visual impact of the building's height and massing on Faneuil Hall Marketplace and the Custom House National Register District. The developer and the Boston Redevelopment Authority responded to this concern in the final EIR by decreasing the building's height from 21 stories to 16 stories (285 feet to 220 feet). These design modifications were brought about by an environmental review process that worked. Credit is due to members of the public who cared enough to get involved, to the developer who recognized his responsibility to address the public's concerns, and to the BRA which responded to public comment and to my requests in an effective and gracious manner."

Accordingly, it is recommended that the Authority, by adoption of the attached Resolution, finally designate Marketplace Center Limited Partnership as redeveloper of Parcel D-10 in the Waterfront Project.



GROUND LEASE

BETWEEN

BOSTON REDEVELOPMENT AUTHORITY

AND

MARKETPLACE CENTER LIMITED PARTNERSHIP

For property known as
Parcel D-10 at the corner of
Commercial Street
and
State Street
Boston
Massachusetts

INDEX

to

GROUND LEASE

between

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For property known as
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THIS GROUND LEASE is entered into by and between the Boston Redevelopment Authority, a public body politic and corporate organized under the laws of the Commonwealth of Massachusetts ("Landlord"), and Marketplace Center Limited Partnership, a Massachusetts limited partnership ("Tenant").

ARTICLE 1

PREMISES

1.1 Landlord, for and in consideration of the rents hereinafter reserved by Landlord and the covenants and agreements hereinafter contained on the part of the Tenant to be paid, kept and performed, does hereby lease to Tenant, and Tenant does hereby take and hire upon and subject to the terms and conditions herein set forth, the Leased Premises.

1.2 The term "Leased Premises" shall mean that certain parcel of land situated on Commercial Street in Boston, Suffolk County, Massachusetts (but excluding all Improvements and all Building Service Equipment, both as hereinafter defined, now or hereinafter located thereon) which land is more particularly described in Exhibit "A" attached hereto and which consists of 75,008 square feet, more or less, together with any easements or other rights now appurtenant to said parcel of land, but specifically excluding all right and interest, if any, of Landlord in and to the land lying in the streets and roads in front of and adjoining said parcel of land, subject however, to the exceptions to fee title described as the Permitted Exceptions set forth in

Exhibit "B" attached hereto.

1.3 The term "Improvements" shall mean all improvements, structures, buildings, interiors, landscaping, paving, pipes and conduits, roads, walkways, fixtures and, to the extent of Tenant's interest therein, fencing and utility lines, existing on the Leased Premises at the Lease Commencement Date, and all alterations and additions thereto and replacements thereof, and any other buildings, structures or improvements hereafter erected on the Leased Premises.

1.4 The term "Building Service Equipment" shall mean all apparatus, machinery, devices, fixtures, appurtenances, equipment and personal property necessary for the proper maintenance, protection, conservation and operation of the Improvements (other than movable trade fixtures, machinery and equipment) and in particular shall include, without limiting the generality of the foregoing, the following, if any: awnings, shades, screens and blinds; asphalt, vinyl, composition and other floor, wall and ceiling coverings; partitions, doors and hardware; elevators, escalators and hoists; heating, plumbing and ventilating apparatus; gas, electric and steam fixtures; chutes, ducts and tanks; oil burners, furnaces, heaters, incinerators and boilers; air cooling and air conditioning equipment; washroom, toilet and lavatory fixtures and equipment; engines, pumps, dynamos, motors, generators, electrical wiring and equipment; tools,

building supplies, lobby decorations and window washing hoists and equipment; garage equipment and gardening and landscaping equipment; and all additions thereto and replacements thereof, but excluding from Building Service Equipment any property coming within the foregoing description which is owned by Occupancy Tenants and used by them in connection with the operation of their respective spaces and not in connection with the operation of the Improvements as a whole.

1.5 The term "Property" shall mean the Leased Premises and the Improvements and the Building Service Equipment.

ARTICLE 2

TERM

2.1 The term of this Lease is for eighty (80) years commencing _____, (the "Lease Commencement Date") and ending at midnight on _____ (the "Lease Expiration Date") unless sooner terminated as provided for in this Lease.

ARTICLE 3

RENT

3.1 Commencing on the Lease Commencement Date, Tenant covenants and agrees to pay to Landlord without demand, abatement, deduction or offset, as rent, in lawful money of the United States, annual rental as follows:

A. Tenant shall pay for each Lease Year or partial Lease Year during the term hereof Base Rent at the annual rate of One Million Four Hundred Thousand Dollars (\$1,400,000),

which sum shall be paid in monthly installments of One Hundred Sixteen Thousand Six Hundred Sixty-Seven Dollars (\$116,667) payable in advance on the first day of each month, except that the first such payment shall be paid on the Lease Commencement Date and shall be prorated if the Lease Commencement Date is other than the first day of the month.

B. Tenant shall also pay as additional rent:

(1) Annually for each Lease Year or partial Lease Year during the term hereof a sum ("Percentage Rent") equal to fifteen percent (15%) of the amount of Net Cash Flow for each such Lease Year, and

(2) As and when the same are received by or made available to or for the benefit of Tenant, fifteen percent (15%) of all Net Refinancing Proceeds.

C. For purposes of this Lease the following terms shall have the following meanings:

(1) The term "Net Cash Flow" shall mean the amount by which Gross Revenue during any given Lease Year exceeds Allowed Deductions during such Lease Year.

(2) The term "Gross Revenue" shall mean:

(a) All revenues and the fair market value of all services, goods or the like of every type and from every source whatsoever (including without limitation Occupancy Tenants) received by the Tenant, or received for the benefit of Tenant, with respect to the use,

occupancy or other utilization of space in, or other facilities of, the Property under any use, occupancy or other agreements, written or oral and however denominated (other than security and other deposits returnable upon expiration of any occupancy lease, except that any such security and other deposits which become the property of the Tenant shall be treated as part of Gross Revenue at such time);

(b) Payments from the Tenant at market rentals for any space which it or any person associated with it occupies or uses in the Property, the Tenant hereby agreeing to make such payments on an annual basis. The market rentals therefor shall be based upon rentals for reasonably comparable space in the Property and as if such space were leased for a term of five (5) years, such market rental rate to be re-calculated at five (5) year intervals;

(c) All interest earned on a reserve account taken as an Allowed Deduction under Section 3.1 C(3)(a), except to the extent such interest is retained in and as a part of such reserve account, subject to the limitations set out in said Section 3.1 C(3)(a).

Gross Revenue shall be computed on a cash basis in accordance with generally accepted accounting principles consistently applied.

(3) The term "Allowed Deductions" shall mean only the following amounts actually paid with respect to the Lease Year in question:

(a) All Impositions (as hereinafter defined) and all reasonable and customary charges incurred for the maintenance, protection, conservation and operation of the Property in the manner required by this Lease and consistent with the operation and management from time to time of like first-class properties in the City of Boston as and to the extent the same are considered ordinary in the business and necessary for its operation, including without limitation: payments made by Tenant for insurance premiums, legal expenses, management expenses, utilities, fuel, repairs and maintenance, accounting, statistical or bookkeeping services or equipment, salaries, advertising and promotion, commissions and other compensation for leasing, alterations and repairs to make space ready for Occupancy Tenants, other charges for operation and management of the Property; and amounts paid to a reserve account, actually maintained by Tenant and held by the Depository, for replacements and capital improvements provided, that, with respect to any such reserve account:

- i) the amount deposited therein in any Lease Year shall not exceed two percent (2%) of Gross Revenues for such Lease Year, and

ii) withdrawals made therefrom shall only be for the purpose of paying for physical assets which replace, or appreciably lengthen the life of an existing asset or adds to the asset base of the Property.

(b) Payments made by Tenant to Landlord of Base Rent;

(c) An amount which shall initially be computed by multiplying Total Project Costs (as defined in Section 31.10 below) by thirteen percent (13%), and after each Refinancing shall be computed by multiplying the greater of (i) Total Project Costs or (ii) the original principal amount of Financing immediately following the most recent Refinancing by thirteen percent (13%). The terms "Financing" and "Refinancing" are defined in Subsection 3.1 C(4) below. The computation shall be made on a prorated basis if a Refinancing shall occur during the course of a Base Year.

(d) If Tenant is required, in connection with the restoration of damage or destruction caused by casualty or as a consequence of a taking by eminent domain, to deposit any amount or amounts with the Depository under the provisions of Section 13.1(c), a deduction shall be allowed (except with respect to amounts so deposited because Tenant has failed to maintain casualty insurance on the Improvements in accordance with the provisions

of this Lease), such deduction to be calculated in order to amortize each amount so deposited over the shorter of (i) the useful life of the restoration or repair, or (ii) the then balance of the term of this Lease.

(e) If Tenant commences restoration of damage caused by casualty or as a consequence of a taking by eminent domain prior to collection of the "Amounts" (as defined in Section 13.1 below) receivable with respect to such casualty or taking, a deduction shall be allowed for all interest incurred by Tenant, prior to the receipt of the Amounts, for the interim financing of such restoration.

Except as otherwise herein provided, Allowed Deductions shall be computed on a cash basis in accordance with generally accepted accounting principles consistently applied.

(4) The term "Financing" means the original principal amount of funds provided by an Institution (as defined in Section 31.6 below) either (i) entirely as debt secured by a Leasehold Mortgage on the Property, or (ii) partly as debt so secured and partly as an equity investment in the Property. The term "Refinancing" means replacing all or a portion of the then existing Financing with new Financing, except that Refinancing shall not include the replacement of the initial construction financing for the Improvements by

the initial permanent financing. For purposes of calculating the Allowed Deduction referred to in Section 3.1, C(3)(c), the amount of Refinancing in excess of Total Project Costs shall not be included unless consented to by Landlord in accordance with the provisions of Section 23.4, clause 6. The term "Net Refinancing Proceeds" means the amount by which the proceeds of Refinancing (reduced by the reasonable expenses incurred by Tenant in connection with the Refinancing) exceed the greater of Total Project Costs or the then outstanding principal balance of the existing Financing.

D. In order that Landlord may receive the Percentage Rent required hereunder in equal monthly installments during each Lease Year, Tenant agrees to submit to Landlord not less than sixty (60) days prior to the beginning of each Lease Year a budget (the "Percentage Rent Budget") which shall set forth a detailed projection (using the foregoing definitions and setting their computations out in separate calculations) of Percentage Rent for the next ensuing Lease Year. Except as provided below in the event that Landlord shall dispute the reasonableness of the Percentage Rent Budget, Tenant shall pay to Landlord, as Percentage Rent, commencing on the first day of the first month of such next ensuing Lease Year and thereafter continue to pay to Landlord on the first day of each month of such Lease Year, an

amount equal to one-twelfth (1/12th) of the Percentage Rent projected in such budget, or one-twelfth (1/12th) of the actual Percentage Rent due Landlord for the preceding Lease Years, whichever is greater, but only if the greater figure does not exceed the lesser figure by more than twenty per cent (20%); otherwise, payments shall be based on the lesser figure plus twenty per cent (20%) thereof.

Landlord may at any time within sixty (60) days after the receipt of the Percentage Rent Budget make such investigations and inquiries as Landlord determines to be appropriate in order to evaluate the reasonableness thereof (including without limitation, an audit and/or examination of the books and records of Tenant with respect to all financial matters relevant to the operation of the Property). Should Landlord determine in the exercise of its reasonable judgment that the Percentage Rent Budget understates the amount of Percentage Rent reasonably to be anticipated for the next ensuing Lease Year, Landlord may make a revised estimate of the Percentage Rent anticipated for such Lease Year and, based thereon, Tenant shall increase its monthly payments of Percentage Rent for the remainder of such Lease Year so as more accurately to reflect Percentage Rent as estimated by Landlord to be due for such next ensuing Lease Year.

E. Within ninety (90) days after the end of each Lease Year, Tenant shall furnish to Landlord a detailed, true, correct and complete statement (the "Year End Financial

Statement") of all income, expenses, and other financial matters reasonably necessary to determine, and setting forth a calculation of, the amount of Net Cash Flow of the Property and of the Percentage Rent due Landlord for the immediately preceding Lease Year, prepared in conformity with the requirements of this Lease by an independent certified public accounting firm selected by Tenant and approved by Landlord. Without limitation, the Year End Financial Statement shall provide a) a complete statement of revenues and expenses on a cash basis, and b) a statement showing changes in the balance of all reserve accounts and financings secured in whole or in part by the Property, and c) a reconciliation with financial statements for which an opinion has been rendered, audited under generally accepted auditing standards. If the Year End Financial Statement shows a deficiency in the payment of Percentage Rent for the preceding Lease Year, Tenant shall promptly pay such deficiency and if the Year End Financial Statement shows an overpayment of Percentage Rent, the amount of such overpayment shall be credited against payment of Base Rent, Percentage Rent and additional rent next falling due hereunder, but reserving in the Landlord the right, in all events, first to offset against such overpayment any sums owing but unpaid by Tenant to Landlord under this Lease.

F. At the time Tenant delivers to Landlord the Year End Financial Statement, Tenant shall also deliver a statement setting forth the name of each current Occupancy Tenant, the term of the leases under which Occupancy Tenants hold possession, the rental being paid under said leases, the square footage and location of the areas subject to said leases, and such additional information as Landlord may require.

G. Landlord reserves the right to conduct an independent audit of Tenant's records regarding all fiscal matters relevant to the Property to ascertain the accuracy of any Year End Financial Statement submitted by Tenant. This independent audit may be conducted at any time within two (2) years of the end of any Lease Year and may be conducted by an accounting firm of Landlord's choice. Such independent audit shall be conducted by a nationally recognized accounting firm (or by an independent certified public accountant selected by Landlord and approved by Tenant, which approval shall not be unreasonably withheld) and if the amount of Net Cash Flow as shown on such independent audit shall exceed by more than five percent (5%) that shown in any such Year End Financial Statement submitted by Tenant, the Tenant shall pay the total cost thereof; otherwise, the cost of such audit shall be borne by Landlord.

H. For purposes of this Lease, a Lease Year shall mean a calendar year commencing January 1 and ending on

December 31 next following, except that the first Lease Year shall commence on the Lease Commencement Date and the last Lease Year shall end on the date the term of this Lease terminates or expires.

I. On or before the 15th day of each April, July, October and January during the term of this Lease, Tenant shall deliver to Landlord a statement itemizing the Gross Revenue and the Allowed Deductions during the quarter-annual period just ended (i.e., the quarter-annual periods ending, respectively, March 31, June 30, September 30 and December 31) together with a statement as to any (i) Occupancy Tenants terminated and/or cancelled, and (ii) new Occupancy Tenants created, and (iii) such other information as may be relevant to computation of amounts due Landlord hereunder.

3.2 It is the intention of the parties hereto that the rent provided for in this Article shall be absolutely net to Landlord throughout the term of this Lease. Except for any debt service charges incurred in connection with financing obtained by Landlord on its reversion hereunder or interest herein and except as otherwise expressly provided in this Lease, in order that such rent shall be absolutely net to Landlord, Tenant shall pay and save Landlord harmless from and against all Impositions, insurance premiums, carrying charges, costs, expenses and obligations of every kind and nature whatsoever relating to the ownership, leasing or operation of the Property which may arise, accrue or become due during the term of this Lease.

ARTICLE 4

PAYMENT OF TAXES AND OTHER CHARGES

4.1 Commencing on the Lease Commencement Date and continuing for the entire term of this Lease, as part of the consideration of this Lease and as additional rent hereunder Tenant agrees to pay and discharge or cause to be paid and discharged promptly as the same become due and payable, all taxes, assessments, charges, license fees, municipal liens, levies, excise taxes or imposts, whether general or special, ordinary or extraordinary, imposed by any governmental authority as a result of or with respect to the ownership or use of the Leased Premises or the Improvements or the Building Service Equipment located thereon which may be levied, assessed, charged or imposed, or may be or become a lien or charge upon the Property, or any part thereof or upon the leasehold estate hereby created, or upon the Landlord solely by reason of its ownership of the Leased Premises (hereinbefore and hereinafter termed an "Imposition"). If at any time during the term of this Lease the methods of taxation or assessment or rate determination applicable to real estate prevailing at the Lease Commencement Date shall be altered so that in lieu of any Imposition described in this paragraph there shall be levied, assessed or imposed an alternate tax, however designated, such alternate tax shall be deemed an Imposition for the purposes of this Lease (including this Article) and Tenant shall pay and discharge such Imposition as provided by this Article. Nothing in this Lease contained shall be construed as imposing upon

Tenant any obligation to pay any income, estate, inheritance, succession, capital levy or transfer tax imposed on the Landlord and growing out of or levied in connection with the Landlord's right in the Leased Premises.

4.2 Any Impositions required to be paid by Tenant which shall relate to the Lease Year during which the term of this Lease shall commence or terminate shall be prorated between Landlord and Tenant as of the date of such commencement or termination. Tenant shall pay all assessments and charges of every type whether general, special, ordinary or extraordinary, which are assessed or levied against or with respect to the Property during the term of this Lease. If the law expressly permits the payment of such assessments or levies in installments, Tenant may utilize the permitted installment method, but shall pay each installment thereon before delinquency. If Tenant shall have permitted or elected to have such assessments or levies made payable in installments over a period of time which extends beyond the date this Lease expires or otherwise terminates the entire unpaid balance of such assessments or levies against the Property during the term hereof and applicable to the period of the leasehold estate created hereby shall be paid by Tenant prior to the expiration of the term hereof or upon any earlier termination of this Lease by depositing such unpaid balance in cash with Landlord, except to the extent that any Occupancy Tenants are required to pay such amounts pursuant to the terms of subleases allowed hereby.

4.3 Tenant shall regularly, and in any event on Landlord's request, deliver to Landlord copies or duplicate receipts (or, if the same are not available, other materials acceptable to Landlord) showing timely payment of all Impositions paid by Tenant as required by this Lease.

4.4 Tenant shall make all payments of all Impositions directly to the charging authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment.

4.5 In the event that the Leased Premises are not separately taxed or assessed, then, in that event, the Imposition as levied shall be apportioned between the Leased Premises and such other areas with which it is assessed in such manner that Tenant shall pay only an equitable portion of any such Imposition. Landlord shall indemnify and hold Tenant harmless from all loss, cost and expense which it may suffer or incur because of the failure on the part of Landlord to pay the Impositions on the property of which the Leased Premises are a part, provided that Tenant shall not be in default of its obligations to pay its equitable portion of such Impositions.

4.6 Subject to the provisions hereof, Tenant shall have the right to contest or review by appropriate legal or administrative proceedings, any Imposition or other charge or levy which Tenant is required to pay pursuant to the provisions of this Article.

Whenever the Tenant desires to contest the amount or validity of any Imposition after it has become payable, as in this Article provided, and prior to the payment thereof, it shall first give written notice to the Landlord of its intention to do so, and, at the option of the Landlord, the Tenant shall, from time to time during the pendency of such proceedings, deposit with the Depository (as hereinafter defined), as security for the payment of such Imposition, money or other security reasonably satisfactory to the Landlord in amount sufficient, in the reasonable judgment of the Landlord, to pay said Imposition, together with all interest and penalties in connection therewith, and all charges that may be assessed against or become a charge on the Property or any part thereof, in said proceedings. Any moneys so deposited by Tenant and the reasonable cost of providing such security shall be an "Allowed Deduction" at the time paid or incurred for purposes of the calculation of "Net Cash Flow" under Section 3.1C, provided, that, when the need for such security terminates, the balance of any moneys so deposited and not applied in payment of an Imposition shall be treated as Gross Revenue under Section 3.1.C(2). If the Tenant shall not have theretofor paid, removed and discharged the Imposition and the interest and penalties in connection therewith, and the charges accruing in such proceedings, then, upon the termination of such proceedings, the money or other security so deposited (together with any

interest on any security deposited hereunder) shall at the direction of the Landlord be applied to the payment, removal and discharge of said Imposition, if any, then payable and the interest and penalties in connection therewith, and the charges accruing in such proceedings, and the balance, if any, shall be paid or returned to the Tenant, but reserving in the Landlord the right, in all events, to direct that the money or other security so deposited (together with any interest on any security deposited hereunder) be paid to it in order to offset against such balance any sums owing but unpaid by Tenant to Landlord under this Lease.

In the event that the money or other security so deposited shall be insufficient for this purpose, the Tenant shall, forthwith, pay over to the Depository an amount of money sufficient (in Landlord's reasonable opinion), together with the money or other security so deposited pursuant to this Section 4.6, to pay the same.

Nothing in this Article, except as hereinabove provided, shall be construed as relieving, modifying or extending the Tenant's covenant to pay any such Imposition and all other charges incident thereto at the time and in the manner in this Article provided.

4.7 The Landlord shall join in any such proceeding where such joinder shall be necessary in order properly to prosecute such proceeding and the Landlord shall have first been fully indemnified against all liability in connection

therewith. The Landlord shall not be subject to any liability for the payment of any costs or expenses in connection with any proceeding brought by the Tenant, and the Tenant covenants to indemnify and save harmless the Landlord from any such costs or expenses, including reasonable legal fees.

4.8 The certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any such Imposition, of the non-payment of any such Imposition, shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill.

4.9 The Tenant shall also pay or cause to be paid all taxes or excises on rent and income received by the Tenant from Occupancy Tenants, all permit, inspection and license fees, franchise or transfer taxes and all other public charges, however described, made or imposed by the City of Boston, the federal government or other public authority by reason of or in respect of the Tenant's interest in this Lease transaction or any document to which the Landlord and the Tenant (or the Tenant alone) is a party, creating or transferring an interest or estate in the Property or any part thereof; or by reason or in respect of the business of the Tenant or the occupancy, use or possession of the Property, or any part thereof, or of any sidewalk, street or alley, or part thereof, adjoining the same, including any

permit and inspection fees, or taxes or other public charges made or imposed upon the Landlord as owner of the Leased Premises by reason of the Tenant being engaged in the business of renting or leasing the Leased Premises.

4.10 It is the express intent of the parties that the Property be fully taxable to the Tenant as if the Tenant were the fee owner thereof, notwithstanding any law or regulation to the contrary, and the Tenant hereby agrees to make no claim or take any action the purpose of which would be to claim that the Property is exempt, directly or indirectly, from taxation. If the Property shall for any reason be treated as so exempt, the Tenant shall pay, in semi-annual payments on January 1 and July 1 of each Lease Year, a sum which would equal the amount of taxes that would be reasonably levied against the Property but for its tax exempt status, as if the Tenant were the fee owner thereof, and all such payments shall be Impositions for all purposes of this Lease including this Article 4 and the calculation of Net Cash Flow under Section 3.1C. Such sum shall be payable as additional rent and shall be determined by the Landlord using, as the basis therefor, the amount of taxes assessed against reasonably comparable properties in the City of Boston.

ARTICLE 5

POSSESSION, USE, COMPLIANCE WITH LAWS, MAINTENANCE AND REPAIRS.

5.1 Possession of the Leased Premises shall be delivered by Landlord to Tenant upon the Lease Commencement Date free and clear of all tenants and occupants and also free of all liens and encumbrances, all except for those matters disclosed in the Permitted Exceptions set forth in Exhibit "B" and such other liens, rights or encumbrances as the Tenant may have approved in writing. The Leased Premises are to be delivered in their present condition, "as is", it being agreed that the Tenant has had opportunity to examine the same in all respects (including subsurface conditions and utilities), that the Landlord has made no representations or warranties of any kind with respect to such condition and that the Landlord shall have no obligation to do any work on or with respect to the Leased Premises, or the condition thereof.

5.2 The Leased Premises and the Improvements shall continuously and without interruption, subject to vacancies arising in the ordinary course of the operation of the Property, be used and devoted solely to a mixture of office, retail and commercial space and parking accessory thereto, all in accordance with legal requirements from time to time applicable thereto and for no other purpose or purposes.

Space at the ground level and on the second floor level shall be devoted to commercial uses consisting only of active retail sales of products or provision of services to the general public, unless Landlord shall otherwise specifically approve in writing.

5.3 The Tenant agrees throughout the term of this Lease, at the Tenant's sole cost and expense, properly to maintain, or cause to be maintained, the Property and each and every part thereof in good order and condition in all respects, subject to reasonable wear and tear (but not obsolescence) free of accumulation of dirt, rubbish, snow and ice, and to make all necessary repairs, interior and exterior, structural and non-structural, ordinary as well as extraordinary, foreseen as well as unforeseen, in order to maintain the Property as required hereby. When used in this Article, the term "repairs" shall include replacements or renewals when necessary, and all such repairs made by the Tenant shall be at least equal in quality and class to the original work. The provisions and conditions of Section 13.2 and 13.4 of Article 13 hereof applicable to changes or alterations shall, mutatis mutandis, apply to maintenance and repairs required under this Section.

5.4 The Tenant agrees throughout the term of this Lease, at the Tenant's sole cost and expense, promptly to comply with, and cause the Property to be maintained in

conformity with, and not in violation of, all laws and ordinances (including, without limitation, the provisions of the Plan, as hereinafter defined) and the orders, rules, regulations and requirements of the federal, state and city governments and appropriate departments, commissions, boards, bureaus, agencies and offices thereof, and the orders, rules, regulations and requirements of the water, sewer, electrical or other inspection departments of the City of Boston and the Board of Fire Underwriters (or any other body now or hereafter constituted exercising similar functions), whether such laws, ordinances, orders, rules, regulations and requirements are foreseen or unforeseen, ordinary or extraordinary, and whether or not the same require structural repairs or alterations. The Tenant will, likewise, observe and comply with the requirements of all policies of public liability, fire and all other policies of insurance at any time in force with reference to the Property (or improvements thereon). The provisions and conditions of Sections 13.2 and 13.4 of Article 13 hereof applicable to changes or alterations shall, mutatis mutandis, apply to work required to be done under this Section.

The Tenant shall not, however, be in violation of the foregoing requirements when, in good faith, it contests, by appropriate legal proceedings, the validity or applicability of any law, ordinance, order, rule, regulation or requirement of any governmental agency and, unless civil or crimi-

nal liability against the Landlord may result therefrom, the Tenant may delay compliance therewith until the final determination of such proceeding, provided, in the case of any contest and delay in compliance:

(a) the Tenant shall notify the Landlord forthwith, upon notice or knowledge of any violation or alleged violation of any such law, ordinance, order, rule, regulation or requirement, and of its intention to contest the same; and, thereafter, shall, from time to time, and on the request of the Landlord, advise the Landlord of the status of any such proceedings;

(b) the Tenant shall indemnify, save harmless and defend the Landlord (with counsel of Tenant's selection, but subject to approval by Landlord which shall not be unreasonably withheld), from any loss, cost, liability or expense which may be incurred by the Landlord by reason of such non-compliance or delay;

(c) the Tenant shall prosecute such contest of validity or applicability to conclusion with all due diligence; and

(d) the Tenant shall pay over to the Depository, on the request of the Landlord, security for the faithful performance and observance of its obligation to comply with any such law, ordinance, order, rule, regulation or requirement, and for the payment of any penalties which may accrue by reason of non-performance

or delay in compliance therewith, if it should be finally determined that the same is valid and applicable.

The provisions of Section 4.6 hereof (relative to the contest of Impositions) shall be applicable, mutatis mutandis, to the time, amounts and kind of security which the Landlord may require under this Section, and the holding and disposition of the same, to the end that, for this purpose, the cost and expense of possible compliance with governmental requirements aforesaid shall be treated as an Imposition.

5.5 The Tenant agrees to indemnify, defend (with counsel of the Tenant's selection, but subject to approval by Landlord which shall not unreasonably be withheld), and save harmless the Landlord against and from any and all claims by or on behalf of any person, firm or corporation, arising during the term of this Lease or any period in which Tenant shall occupy any part or all of the Property from the conduct or management of or from any work or thing whatsoever done in or about the Property, and will further indemnify, defend (with counsel of the Tenant's selection, but subject to approval by Landlord which shall not unreasonably be withheld), and save harmless the Landlord against and from any and all claims arising during (even though asserted after) the term of this Lease from any condition of the Property, or arising from any breach or default on the part

of the Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed under the terms of the Lease, or arising from any act or neglect of the Tenant or any of its agents, contractors, servants, employees or licensees, or anyone claiming by, through or under the Tenant, or arising from any accident, injury or damage whatsoever caused to any person, firm or corporation occurring during the term of this Lease, in or about the Property. Notwithstanding the foregoing, nothing herein shall obligate the Tenant to indemnify, defend or save harmless the Landlord from any claims arising solely out of the negligence or default of Landlord, its agents, contractors, servants, or employees.

5.6 The Tenant agrees to pay and be liable for the payment of all costs and charges, including the reasonable fees of counsel engaged by the Landlord, incurred in exercising rights of the Landlord under this Lease on account of any default or breach of condition by the Tenant, or occurrence of condition which, under this Lease, confers upon the Landlord the right to exercise remedies available to the Landlord in the event of default of the Tenant, including, without limitation, such costs and expenses incurred in enforcing the Landlord's right to possession of the Property after the expiration or earlier termination of the term of this Lease.

5.7 For the purposes of this Article, sidewalks which adjoin or abut the Leased Premises and Commercial Street to the extent it abuts the Leased Premises and the areas referred to under Article 32 hereof shall, to the maximum extent permissible according to law, throughout the term of this Lease, be kept by Tenant free of accumulation of dirt, rubbish, snow and ice. The Landlord and Tenant agree that no commercial activities shall be conducted upon the areas referred to in the preceding sentence without their mutual written consent.

To the extent that legal liability for maintenance thereof is imposed upon any private owner of property in the jurisdiction in which the Leased Premises lies, the Tenant shall perform the obligations on the part of any such owner required to be performed under applicable law, with respect to any other public areas, such as streets and vaults, adjoining the Leased Premises, for which, under applicable law, a private owner of property abutting the same may be responsible.

ARTICLE 6

CESSATION OF USE; NO ABATEMENT OF RENT

6.1 Except as otherwise specifically provided in this Lease, this Lease shall not be terminated, the respective obligations of the parties shall not be affected and no abatement, refund, offset, diminution or reduction of Base Rent, Percentage Rent or amounts due as additional rent

shall be claimed by or allowed to Tenant, or any person claiming by, through or under Tenant, under any circumstances whatever, whether for inconvenience, discomfort, interruption, cessation or loss of business, or otherwise, or whether arising from the making of alterations, changes, additions, improvements or repairs to any buildings or other Improvements now on, under or above or which may hereafter be erected on, under or above the Leased Premises, or whether by virtue or because of any present or future governmental laws, ordinances, regulations, direction or action or for any other cause or reason whatsoever and whether or not stated in or implied by the foregoing.

ARTICLE 7

DESIGN REVIEW; CONSTRUCTION OF IMPROVEMENTS;

CERTIFICATE OF COMPLETION

7.1 Landlord acknowledges that, prior to the execution of this Lease, Tenant has submitted to Landlord and Landlord has approved the following plans with respect to the Improvements initially to be constructed on the Leased Premises (the "Initial Improvements", which shall also be considered as Improvements for the purposes of this Lease unless such meaning would be repugnant to the context in which such term appears):

- (a) the Schematic Design;
- (b) the Design Development;

(c) the Preliminary Working Drawings and Outline Specifications;

(d) the Final Working Drawings and Specifications; all of which are more specifically identified in Exhibit "C" attached hereto and which are incorporated herein and made a part hereof.

7.2 Tenant shall not apply for a building permit with respect to all or any part of the Initial Improvements or with respect to any changes or alterations requiring Landlord's approval under Section 8.1 hereof without the prior certification of Landlord that the work to be done or completed as set forth in the permit application is in accordance with said Final Working Drawings and Specifications, as initially approved by Landlord or as subsequently amended and approved in writing by Landlord. No work shall be done with respect to all or any part of the Initial Improvements or with respect to such changes or alterations unless such work conforms in every respect with such approved or amended and approved Final Working Drawings and Specifications.

7.3 With respect to the Initial Improvements only:

(a) The Tenant shall begin the construction of the Initial Improvements in accordance with the approved Final Working Drawings and Specifications as soon after the Lease Commencement Date as is reasonably practicable.

(b) The Tenant shall diligently prosecute to completion the construction of the Initial Improvements and shall complete such construction not later than thirty (30) months from the first to occur of the Lease Commencement Date or the date on which any work is started on the Leased Premises relating to construction of the Initial Improvements, as such period may be extended pursuant to the provisions of Section 7.9 hereof, or such additional time beyond such thirty (30) month period (as such 30 month period may be extended pursuant to Section 7.9 hereof) as may be approved by Landlord, which approval shall not be unreasonably withheld. Withholding of consent requested because of financial difficulties shall not be treated as unreasonable action by Landlord.

(c) Tenant shall submit to Landlord for its approval a detailed estimated progress schedule at the time construction of the Initial Improvements is begun in a format generally used in large scale urban construction projects. This schedule shall be resubmitted each month until the construction of the Initial Improvements has been completed, with actual progress shown in each submission. This monthly submission shall be accompanied by a written report by Tenant citing any adjustments to the progress forecast, analyzing the causes thereof, and, where applicable, noting corrective efforts. Such work of Tenant shall be subject to inspection by representatives of Landlord, and Landlord

shall endeavor to notify Tenant promptly of any respects in which Landlord observes that Tenant is not proceeding with construction of the Initial Improvements as required by this Lease and shall promptly furnish to Tenant copies of all reports prepared by representatives of Landlord in connection with such inspections. Upon receipt of such notification, Tenant shall promptly undertake and proceed diligently to cure any such defects to the reasonable satisfaction of Landlord. Nothing herein shall be treated as allowing the Tenant an extension of time deadlines, without Landlord's prior written consent, (except as provided in Section 7.9 hereof), nor shall Landlord's inspections or actions or failure to act hereunder render Landlord liable to Tenant or any other party for failure of the Initial Improvements to be constructed as required by the terms of the Lease.

(d) No change order or modification (referred to herein after as "Change Orders") for an addition to or extension of the Initial Improvements (as shown on the Final Working Drawings and Specifications) or which would affect in any way the external appearance of public lobbies, arcades, open spaces or landscaping, or the external appearance of any building (including roof and penthouse) shall be issued or implemented unless such Change Order shall have been submitted to and approved in writing by Landlord prior to its issuance and implementation. If

Landlord shall neither approve or disapprove in writing within ten (10) days of receipt by it of a notice containing such Change Order, then it shall be treated as having been approved. In the event Tenant shall fail to comply with the foregoing requirements, Landlord may, within a reasonable time after discovery thereof by Landlord, direct in writing that Tenant modify or reconstruct such portion or portions of the Initial Improvements erected or being erected as are not in conformance with the approved Final Working Drawings and Specifications or any approved modifications thereof, or Change Order therefor, so as to bring them into conformance therewith. Tenant shall promptly comply with such a directive. In addition to any other remedies available under this Lease, Landlord may enforce the provisions of this subsection (d) by an action in a court of appropriate jurisdiction to compel specific performance. Tenant shall send Landlord a copy of any other change order or modification relating to the Initial Improvements as soon as the same has been approved by the Architect.

7.4 Tenant shall not discharge the Architect or General Contractor without cause or hire new or additional architects or general contractors or substantially alter or substantially amend the contract for architectural services between the Architect and the Tenant and the Architect or the construction contract between the Tenant and the General Contractor without in each instance obtaining the prior written consent of Landlord.

7.5 No sign shall be erected or placed on the exterior of any Improvement on the Leased Premises, or on any portion of the Leased Premises which is not enclosed within a building, or which is visible to the public from outside a building, unless the character, location, design, size, shape, form and lighting of such sign shall have been approved by Landlord in writing. Without limiting in any way the scope of Landlord's review, no sign shall be approved which does not meet the following standards. Signs may only be erected or placed upon the ground floor street facade of each store, if any, or other individual ground floor use. Flashing signs, and signs relating to businesses other than those on the Leased Premises, shall not be permitted. All allowed signs shall conform to applicable laws and regulations, including the Boston Sign Code.

7.6 Tenant shall provide as part of the Initial Improvements, and off-site work performed by Tenant (including without limitation, work within the areas referred to in Exhibit E) in connection with and relating to the construction of the Initial Improvements, works of art reasonably satisfactory to Landlord and shall expend for such works of art a sum at least equal to one percent (1%) of the Total Project Costs. In this connection, Tenant shall include in the Final Working Drawings and Specifications submitted to Landlord a general program for employment of art to support and enhance the Initial Improvements. The term "works of

art" as used herein shall include ornaments, arrangements, or effects created through the use of sculpture, bas-reliefs, mosaics, frescos, murals, prints, tapestries, paintings, fountains which are sculptural in themselves or designed to enhance the setting of the sculpture, and non-standard street and open space treatments and other improvements having an increment of aesthetic value as approved by Landlord.

7.7 It is the general policy of Landlord that all new buildings constructed in urban renewal project areas shall be so designed to accommodate persons who are physically handicapped. In furtherance of this policy, and without limiting Tenant's obligation to comply with all legal requirements applicable thereto, the Final Working Drawings and Specifications shall include provisions conforming insofar as practicable with the "American Standard Specifications for Making Buildings and Facilities Accessible to and Useable by the Physically Handicapped" as published by the National Society for Crippled Children and Adults, Inc., which Specifications, as amended from time to time, are hereby incorporated herein by reference. Landlord shall take into consideration the provisions and objectives of such Specifications in its review of and action upon the Final Working Drawings and Specifications.

7.8 Tenant shall erect and properly maintain at all times, as required by the conditions and the progress of

work performed by or at the request of Tenant from time to time during the term of this Lease all necessary safeguards for the protection of workmen and the public.

7.9 Tenant agrees for itself and every successor in interest to the leasehold estate in the Leased Premises, or any part thereof, that Tenant will take all steps necessary to enable it to, and that it will, commence construction of the Initial Improvements, and that it will diligently prosecute and complete the same, in accordance with the times set forth therefor in Section 7.3(a) and (b) hereof; provided, however, that Tenant's obligations under Sections 7.3(a) and (b) hereof are subject only to delays occasioned by acts of God, general unavailability of labor or materials, governmental restrictions, strikes and other labor difficulties not caused by Tenant or like causes beyond the reasonable control of the Tenant, but financial inability to proceed shall never be treated as a cause beyond the Tenant's reasonable control.

It is intended and agreed that the agreements and covenants contained in Section 7.3 hereof shall be covenants running with the land and that they shall be, in any event, and without regard to technical classification or designation, legal or otherwise, and, except only as otherwise specifically provided in this Lease, to the fullest extent permitted by law and equity, binding for the benefit of the community and Landlord and enforceable by Landlord against

Tenant and every successor in interest to or of the leasehold estate in the Leased Premises or any part thereof or any interest therein.

Landlord shall cooperate with and assist Tenant in every reasonable way in Tenant's efforts to obtain all governmental consents, approvals, permits, or variances which may be required for the construction of the Initial Improvements, but this obligation shall not require the expenditure of any monies by Landlord, (including, without limitation, expenditures for permits or approvals of any type).

7.10 Landlord shall during the term of this Lease comply with the terms and provisions of the Cooperation Agreement relating to the Plan between it and the City of Boston, dated June 24, 1964 (which is hereby incorporated herein by reference) and shall enforce all of its rights thereunder, to the extent such enforcement shall be necessary in Tenant's reasonable judgment to enable Tenant to meet its obligations hereunder.

7.11 The Initial Improvements shall be deemed completed for the purposes of this Lease when such Initial Improvements have been substantially completed in accordance with the approved Final Working Drawings and Specifications, as modified by any Change Order approved by Landlord.

Promptly after such substantial completion of the Initial Improvements in accordance with the provisions of

this Lease, the Landlord will furnish the Tenant with an appropriate instrument so certifying (hereinafter the "Certificate of Completion"). Such certification by the Landlord shall be a conclusive determination of satisfaction and termination of the agreements and covenants in this Lease with respect to the obligations of the Tenant and its successors and assigns to commence and complete the Initial Improvements, except that such certification and such determination shall not constitute evidence of compliance with or satisfaction of any obligation of the Tenant to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance the Initial Improvements or any part thereof.

Tenant agrees that Landlord shall be under no obligation to issue a Certificate of Completion until such time as the Landlord has had a reasonable opportunity to inspect the Initial Improvements constructed pursuant to the provisions of this Lease, the Final Working Drawings and Specifications, (as modified by any Change Order approved by Landlord) provided, however, that the Landlord shall not be required to make an inspection hereunder unless the Tenant has requested by written notice to Landlord requesting that it issue a Certificate of Completion.

If Landlord shall refuse or fail to issue a Certificate of Completion in accordance with the provisions of this Section 7.11, Landlord shall, within thirty (30) days after

receipt by Landlord of a notice containing a written request by Tenant, provide Tenant with a written statement, indicating in adequate detail in what respect Tenant has failed substantially to complete the Initial Improvements in accordance with the provisions of this Lease, and what measures or actions will be necessary, in the opinion of Landlord, for Tenant to take or perform in order to obtain a Certificate of Completion. If Landlord shall refuse or fail to provide Tenant with such a written statement within thirty (30) days of a request therefor by Tenant, the Certificate of Completion shall be deemed to have been issued.

ARTICLE 8

CHANGES AND ALTERATIONS

8.1 After the Initial Improvements required by this Lease to be constructed by the Tenant on the Leased Premises or any portion thereof have been completed, the Tenant shall not without the prior written approval of Landlord reconstruct, demolish, subtract therefrom, make any additions thereto or extensions thereof, or change the materials, design, dimensions, or color thereof, nor permit the same by any Occupancy Tenant or any other person, if such reconstruction, demolition, subtraction, addition, extension or change would affect in any way the external appearance of public lobbies, arcades, open spaces or landscaping, or the external appearance of any building (including roof and penthouse) except that the restoration of the Improvements after a casualty or eminent

domain taking to the condition required to exist prior to such event shall not require Landlord's approval.

8.2 In requesting such approval, Tenant shall submit to Landlord for its approval such plans, specifications, and other materials for the proposed work as are required by the Design Review Procedure attached as Exhibit "D" to this Lease, all within such reasonable time limits as Landlord shall require therefor.

8.3 If Landlord shall consent to any alteration, addition, change or modification requiring such consent under Section 8.1 hereof, the same shall be accomplished by Tenant in compliance with these requirements:

(a) No work shall be undertaken until the Tenant shall have produced and paid for, or caused to be paid for, so far as the same may be required from time to time, all governmental permits and authorizations of the various governmental agencies having jurisdiction.

The Landlord agrees to join in the application for such permits or authorizations, whenever such action is necessary, but at the Tenant's sole cost and expense.

(b) No work shall be undertaken until Tenant shall have presented evidence acceptable to Landlord of Tenant's ability to pay for the cost thereof.

(c) Any work, the cost of which is reasonably estimated at one hundred fifty thousand dollars (\$150,000) or more, shall not be undertaken or permitted, except

after compliance with the requirements of Article 13, below.

8.4 If the Tenant shall fail to comply with the foregoing requirements of this Article 8, the Landlord may, without limiting other remedies available to it, direct in writing that the Tenant modify, reconstruct or remove any work done without the prior written approval of the Landlord. The Tenant shall promptly comply with such a directive, and shall not proceed further with any work until such directive is satisfied.

ARTICLE 9

MECHANICS' AND OTHER LIENS

9.1 The Tenant agrees that it shall not suffer or permit any mechanics', laborers', materialmen's or other liens to attach against or be filed against the Property or any part thereof, by reason of work, labor, services or materials supplied or claimed to have been supplied to or on behalf of the Tenant or to anyone claiming by, through or under the Tenant (Landlord and Tenant hereby expressly agreeing that Landlord shall have no liability whatsoever on account of any such liens, such liability being hereby expressly denied and prohibited). If any mechanics', laborers', materialmen's or other liens shall at any time be filed against the Property, or any part thereof, the Tenant shall cause the same to be discharged of record within forty-five (45) days after the date of filing the same unless, within

such forty-five (45) day period, the Tenant shall furnish the Landlord with satisfactory evidence that it has instituted appropriate legal proceedings to contest any such lien which will prevent the enforcement thereof prior to the final determination of such proceedings and has deposited with the Depository, or, with the Court in which the lien is being contested, money in an amount sufficient in Landlord's reasonable opinion from time to time to assure payment of the lien, together with interest, penalties, court costs and attorneys' fees arising in such proceedings, or a surety bond reasonably satisfactory to Landlord, for an amount sufficient to guarantee the payment of such lien, together with interest, penalties, court costs and attorneys' fees.

9.2 The Tenant agrees diligently to prosecute such proceedings to a final determination or conclusion. If the Tenant shall fail to discharge such mechanics', laborers', materialmen's or other liens within such period or, in the event it desires to contest such lien by appropriate legal proceedings, fails to comply with any of the foregoing requirements in connection therewith and diligently to prosecute such proceedings to a final determination or conclusion, then, in addition to any other right or remedy by the Landlord, the Landlord may, but shall not be obligated to, discharge the same either by requiring the Depository to pay (to the extent of the monies hereby held by it) the amount claimed to be due or by procuring the discharge of

such lien by deposit in Court or by giving security or in such manner as is, or may be, prescribed by law. Any amount paid by the Landlord for any of the aforesaid purposes, and all reasonable legal and other expenses of the Landlord, incident to obtaining the discharge of such liens, with all necessary disbursements in connection therewith, with interest thereon at the rate hereinafter set forth from date of payment, shall be paid by the Tenant to the Landlord on demand, and, if unpaid, may be treated as additional rent due hereunder.

Nothing in this Article contained shall imply any consent or agreement on the part of the Landlord to subject the Landlord's estate to liability under any mechanics', materialmen's or other lien law.

ARTICLE 10

INSURANCE

10.1 The Tenant shall, at the Tenant's sole cost and expense, keep the Improvements, the Building Service Equipment (but not including movable trade fixtures, machinery and equipment), insured in the name of the Tenant and the Landlord and the Leasehold Mortgagee, if required by the Leasehold Mortgage (and if the Leasehold Mortgagee agrees that the proceeds thereof shall be applied in accordance with the provisions of this Lease), as their respective interests may appear: (1) against loss or damage by fire and (2) against such other risks as Landlord may reasonably require and as

are now or may hereafter be covered on buildings similar in construction, general location, use and occupancy, to the Improvements, including, but without limiting the generality of the foregoing, windstorm, hail, explosion, riot and civil commotion, damage from aircraft and vehicles and smoke damage, together with so-called demolition and increased cost of reconstruction coverage, as and when insurance against such risks is obtainable. The amount of insurance shall be equal to the replacement cost thereof (which shall mean actual replacement cost without deduction for physical depreciation), excluding excavation costs and costs of foundations, footings and underground installations. The replacement cost thereof shall be accepted by the company issuing such casualty loss policy and evidenced by an "agreed amount endorsement" or waiver of co-insurance, or other evidence satisfactory to Landlord. Not more frequently than annually, the Landlord shall have the right to notify the Tenant that it elects to have the replacement cost redetermined by the insurance company then providing coverage. The redetermination shall be made promptly in such manner as is acceptable to Landlord, the insurance company, and the Leasehold Mortgagee and each party shall be promptly notified of the results. The insurance policy shall be adjusted according to the redetermination, and Tenant shall pay any increase in the premiums.

10.2 Tenant shall, at its sole expense, procure and maintain during the term hereof rent or rental value insurance naming Tenant and Landlord as insureds, as their interests may appear, in an amount equal to not less than one hundred percent (100%) of (i) the annual Base Rent due Landlord hereunder, and (ii) the annual Percentage Rent due Landlord hereunder (based upon the actual amount of Percentage paid Landlord for the most recent Lease Year preceding the date of the insurance contract).

10.3 The Tenant shall also maintain, at the Tenant's sole cost and expense, but for the mutual benefit of the Landlord and the Tenant, and in the name of the Landlord and the Tenant, and the Leasehold Mortgagee, if required by the Leasehold Mortgage:

(a) comprehensive general public liability insurance against claims for personal injury, death or property damage occurring upon, in or about the Leased Premises or the Improvements or any elevators or escalators therein, and on, in or about the adjoining streets and passageways, such insurance to afford protection with combined single limit coverage of not less than One Million Dollars (\$1,000,000.00). Such insurance shall provide coverage not only on an accident basis but also on an occurrence basis; and such limits shall be subject to increase as Landlord may from time to time reasonably require;

(b) steam boiler insurance on all steam boilers, pressure boilers or other apparatus in such amounts as Landlord may from time to time reasonably require;

(c) war damage insurance (whenever such insurance shall be written by, through or with the aid of any governmental agency or authority and a state of war or public emergency exists) upon the Improvements and the Building Service Equipment to the replacement cost thereof (which shall mean actual replacement costs without deduction for physical depreciation), including foundations and underground installations, or to the maximum amount of coverage which may be obtained, if less than the replacement cost, as aforesaid;

(d) flood insurance in such amount as Landlord may reasonably require, if the Leased Premises shall be situated in an area designated by the United States Government, or any political subdivision thereof, as as "flood hazard area" or by whatever designation the result of which is to require such insurance coverage as a condition to obtaining or maintaining a federally insured mortgage loan or obtaining a mortgage loan from a federally regulated institution; and

(e) such other forms of insurance (including broadened coverage of existing insurance) and in such amounts as Landlord may from time to time reasonably require consistent with the requirements of institutional lenders with respect to like properties in Boston.

10.4 Every insured loss shall be adjusted and settled promptly by the Landlord (but only after having first received the written approval of the proposed settlement by the Tenant, and the Leasehold Mortgagee, if the Leasehold Mortgagee is named as an insured on any policy as permitted by this Lease). All insurance proceeds and all amounts payable as a result of such settlements (collectively, "Proceeds") (less, in either case, costs, fees and expenses incurred in the collection thereof, which shall be paid out of such proceeds) shall be paid to the Depository and applied by it as hereinafter set forth.

10.5 Proceeds from rental insurance, less any cost of recovery, shall be applied to the Tenant's obligation for the payment of the Base Rent, Percentage Rent, additional rent and to satisfy any other unpaid obligation of Tenant to Landlord hereunder and the Tenant shall be relieved from its obligation to make such payments to the extent that such Proceeds are so applied. The balance of Proceeds, from rental insurance, if any, shall be paid first to the Leasehold Mortgagee as its interest shall appear and then to the Tenant if the Tenant is not then in default hereunder.

10.6 Proceeds attributable to any casualty, shall be applied by the Depository to the repair and restoration of Improvements and Building Service Equipment in accordance with the provisions of Article 11 and Article 13 hereof, or if the Proceeds shall be less than \$150,000 and the Tenant

shall not be in default hereunder, such Proceeds shall be paid to the Tenant, which agrees to use the same to accomplish repair or restoration as required by this Lease and to retain the balance, if any, after such repair or restoration as Tenant's absolute and unconditional property subject to the rights of any Leasehold Mortgagee, provided, however, that if this Lease should terminate because of the Tenant's default prior to the time that the Tenant has made or completed such repair or restoration, such Proceeds shall be paid to the Landlord as its absolute and unconditional property.

10.7 Other Proceeds shall be applied by the Depository as the Landlord and Tenant direct.

10.8 All policies of insurance hereinbefore referred to shall be written in companies authorized to do business in the Commonwealth of Massachusetts satisfactory to the Landlord, and shall be written in such form as shall be acceptable to the Landlord. All policies of insurance shall provide that any act or negligence of Tenant shall not prejudice the rights of Landlord as a party insured under said policies, and notwithstanding the fact that the Landlord has agreed that the proceeds of such insurance shall be used in the restoration or rebuilding of Improvements and Building Service Equipment located upon the Leased Premises. All policies of insurance shall contain an agreement by the insurers that such policies shall not be cancelled or materially changed without at least thirty (30) days' prior

written notice to the Landlord, the Leasehold Mortgagee and such other parties as may be named as insureds thereunder.

The Tenant shall deliver to the Landlord, on or before the commencement of the term of this Lease, all such policies of insurance (or certificates or certified copies thereof if the original of any such policy is required to be delivered to a Leasehold Mortgagee), in the amounts and covering the risks hereinabove provided, endorsed "Premium Paid" by the company or agency issuing the same, and the Tenant shall deliver to the Landlord, not less than thirty (30) days' prior to the expiration of any then current policy, a new policy in replacement thereof, endorsed "Premium Paid" by the company or agency issuing the same. However, if the insurance is carried under a blanket policy, as permitted by Section 10.10 hereof, the Tenant may deliver certificates thereof, specifying the amount of insurance allocated to the Property in lieu of the original policy, as long as the possession of such certificates confers upon the holder thereof the same rights as the holder would have if in possession of the original of such insurance policies.

10.9 During the course of any construction of the Initial Improvements or of any construction requiring Landlord's approval under Section 8.1 hereof, and in any other situation when such coverage may be appropriate, Tenant shall carry and pay, or cause to be carried and paid for (i) appropriate builder's risk insurance and (iii)

owner's contingent or protective liability insurance naming Landlord as an additional insured covering claims not covered by or under the terms of the above-required comprehensive public liability insurance, with combined single limit coverage of not less than One Million Dollars (\$1,000,000.00).

In addition thereto, at any other time when the Tenant maintains employees incident to operations on the Property, the Tenant shall also carry and pay for, or cause to be carried and paid for, workmen's compensation insurance in statutory amounts covering all persons (other than employees of the Landlord, if any), with respect to whom death or injury claims could be asserted against the Property or any part thereof, or the interests of the Landlord or the Tenant therein.

The Tenant shall deliver to the Landlord certificates of insurance evidencing all workmen's compensation insurance policies and renewals thereof, promptly as and when such policies are issued and renewed. The Tenant's fulfillment of the statutory requirements relating to self-insurance under workmen's compensation laws shall, upon proof of such compliance satisfactory to the Landlord, be treated as compliance with the workmen's compensation insurance requirements of this Article.

10.10 Any insurance required to be furnished by the Tenant may be effected by a policy or policies of blanket insurance, provided, however, that the amount of the total

insurance allocated to the Property, as herein defined, shall be such as to furnish in protection the equivalent of separate policies in the amounts herein required, and provided, further, that, in all other respects, any such policy or policies shall comply with the other provisions of this Lease.

10.11 The aforesaid minimum limits of insurance policies shall in no event limit the liability of Tenant hereunder. Insofar as and to the extent that the following provision may be effective without invalidating or making it impossible to secure insurance coverage obtainable from responsible insurance companies doing business in Massachusetts (even though extra premium may result therefrom) Landlord and Tenant mutually agree that, with respect to any loss which is covered by insurance then being carried by them, respectively, the one carrying such insurance and suffering said loss releases the other of and from any and all claims with respect to such loss; and they further mutually agree that their respective insurance companies shall have no right of subrogation against the other on account thereof. If, at the written request of one party, this release and non-subrogation provision is waived, then the obligation of reimbursement shall cease for such period of time as such waiver shall be effective, but nothing contained in this Section shall be deemed to modify or otherwise affect releases elsewhere herein contained of either party for

claims. Tenant shall bear all costs incurred by either party in complying with this Section 10.11.

ARTICLE 11

DAMAGE TO OR DESTRUCTION OF THE PROPERTY

11.1 The Tenant agrees that, in case of damage to or destruction of any part of the Property by fire or otherwise, or should any part of the Property become untenable or unuseable for any reason, this Lease shall not terminate nor shall there be any abatement or reduction in the Base Rent, Percentage Rent, additional rent or other charges payable by the Tenant, nor shall the respective rights or obligations of the Landlord and the Tenant be affected in any way, except as specifically provided in this Lease.

The terms "damage or destruction", for the purposes of applying this provision of this Lease, shall refer to any condition requiring correction to make the Property, or any part thereof, tenantable or useable for its intended purposes.

11.2 The Tenant agrees that, in the event of any damage or destruction, the Tenant shall promptly notify the Landlord. Tenant, at its sole cost and expense, shall promptly repair, restore and rebuild the Property, or cause the same to be repaired, restored and rebuilt, so that, upon the completion thereof, the Property shall have been restored to the condition required immediately prior to such damage or destruction. The provisions and conditions of Article 13 governing procedures applicable to restoration, changes or

alterations of Improvements shall be applicable to work required to be done under this Article.

11.3 All Proceeds (except as otherwise provided in Section 10.5 with respect to rent insurance) shall be held and applied to the payment of the cost of repairing, restoring and rebuilding required by this Article in accordance with the provisions of Section 10.6 and Article 13 hereof.

ARTICLE 12

CONDEMNATION

12.1 With respect to any exercise of the power of eminent domain (hereinafter referred to as a "Proceeding") or any agreement in lieu of condemnation (hereinafter referred to in this Article as an "Agreement") between the Landlord, the Tenant and those authorized or purporting to be authorized to exercise the power of eminent domain, for a conveyance to a condemning authority (such conveyance being hereafter in this Article referred to as "conveyed" or as a "conveyance"), the Tenant and the Leasehold Mortgagee, in cooperation with the Landlord, shall have the right to participate in negotiations, any Proceeding or any Agreement leading to an Award (as hereinafter defined) to protect their respective interests hereunder. The total Net Award made in such Proceeding or the consideration paid or payable pursuant to such Agreement (hereinafter collectively or separately referred to as the "Award"), shall be paid by whomever received to the Depository, which shall apply the

same as herein provided. The term "Net Award" shall mean the total Award, less all costs, expenses and attorneys' fees incurred in the collection thereof.

12.2 If, during the term of this Lease, the entire Property shall be taken as a result of a Proceeding or an Agreement, this Lease and all right, title and interest of the Tenant hereunder shall terminate and come to an end on the date title shall vest in the condemning authority pursuant to such Proceeding or Agreement, but shall not terminate as to the Award. In that event, the rent, additional rent, Impositions or other charges herein provided to be paid by the Tenant shall be apportioned to the date title shall vest in the condemning authority in such Proceedings or pursuant to such Agreement and any amounts prepaid by Tenant in excess of its liability based on such apportionment shall be refunded by Landlord to the Tenant. As to any such taking, the Net Award shall be distributed as follows:

(a) The following values shall be determined as of the date title is vested in the condemning authority in such Proceeding or pursuant to such Agreement by agreement of the parties or, failing such agreement, by appraisal in the manner set forth in Section 12.2(c) hereof.

(x) The value of Landlord's interest in the Property. This shall be the then fair market value of the Leased Premises as encumbered by this

Lease plus the residual value of the Improvements and the Building Service Equipment, all determined as if no taking had occurred.

(y) The value of Tenant's interest in the Property. This shall be the then fair market value of the Improvements and the Building Service Equipment recognizing that the residual value of the Improvements and the Building Service Equipment belongs to Landlord at the expiration of the term of this Lease, plus the value of the leasehold interest under this Lease, taking into account the amounts to be paid and other obligations to be performed by Tenant under this Lease, all determined as if no taking had occurred.

(b) After making the determinations described in subparagraph (a), above, the Net Award shall be applied as follows:

(i) First, to the Landlord as a first charge against the Net Award, an amount equal to the present value, (determined by using a discount rate equal to the rate of interest called for by Section 34.10 hereof) as of the date title is vested in the condemning authority, of the Base Rent until the Lease Expiration Date.

(ii) Second, to the holder of the first Leasehold Mortgage for the account of Tenant, and

as a second charge against the Net Award, an amount equal to the outstanding indebtedness secured by the first Leasehold Mortgage.

(iii) Third, to the Landlord or the Tenant as the case may be, the amount which is necessary to bring the amounts paid to Landlord under (i) above and to the Leasehold Mortgagee for the account of Tenant under (ii) above into proportion based on the ratio of (x) representing Landlord's interest in the Net Award and (y) representing Tenant's interest in the Net Award, as determined above.

(iv) The balance, if any, shall be paid to Landlord and Tenant in proportion to their respective interests determined in accordance with the ratio of (x) to (y) after deducting from Landlord's share the amount paid under (i) above and after deducting from Tenant's share the amount paid under (ii) above and after deducting the amount paid under (iii) above from the share of the party to whom paid.

(c) If the Landlord and the Tenant are unable to agree on the values to be determined under Section 12.2(a), the values shall be set by an independent panel of three appraisers each of whom shall have recognized expertise and not less than five years professional experience in the valuation of downtown,

large-scale urban commercial real estate in the City of Boston, of whom one is to be selected by the Landlord, one is to be selected by the Tenant, and the third is to be selected by mutual agreement of the two first selected. Such appraisal shall be made at the request of either Landlord or Tenant, and shall be carried forward expeditiously once requested. Each party shall pay its own appraiser's fees and costs and one-half of the fees and costs of the third appraiser.

12.3 If, during the term of this Lease, a part of the Property shall be taken or conveyed, and such taking or conveyance does not diminish any portion of the Leased Premises which the Tenant is permitted hereunder to lease to Occupancy Tenants, this Lease shall terminate as to the part of the Property which is taken, upon the date title is vested in the condemning authority in such Proceeding or pursuant to such Agreement, but this Lease shall continue in full force and effect as to the remainder of the Property. Notwithstanding the foregoing, the Tenant hereby waives any and all claims against the Landlord or the City of Boston to awards of damages, if any, to compensate for the closing, laying out, or change of grade of any street or other public way within or fronting or abutting on the Leased Premises which pursuant to the Plan is to be or is closed, laid out, or changed in grade. The Landlord hereby waives the right to any share of the award of damages to the Landlord's interest

in the Property arising out of any taking made by the Landlord.

As to any such taking (or portion thereof) for which compensation has not been waived by the Tenant, the Net Award shall be distributed as follows:

(i) Subject to the provisions of Article 13 hereof, first to the Tenant, to the extent of and as a first charge against the Net Award, an amount not exceeding the actual cost reasonably incurred by the Tenant of performing restoration of the Property and any other obligation under the Lease imposed upon Tenant as the result of the taking.

(ii) The balance, if any, of the Net Award shall be paid to the Landlord.

12.4 (a) If, during the term of this Lease, a part of the Property shall be taken or conveyed, and such taking or conveyance diminishes any portion of the Leased Premises which the Tenant is permitted hereunder to lease to Occupancy Tenants, this Lease shall terminate and come to an end as to the part of the Property which is taken, upon the date title is vested in the condemning authority in such Proceeding or pursuant to such Agreement, but shall not terminate as to the Award for the part of the Property which is taken, and otherwise this Lease shall continue in full force and effect as to the remainder of the Property, subject to the provisions of Section 12.4(b) hereof.

If there is a taking of the type provided for in this Section 12.4, then, as to the part of the Property not so taken, the Tenant covenants and agrees, for itself and its successors in interest, that the Tenant shall, at its sole cost and expense (subject to reimbursement to the extent hereinafter provided), promptly restore that portion of the Property not so taken to a complete architectural unit for the use and occupancy of the Tenant (and those claiming under Tenant) as in this Lease expressed. The provisions and conditions in Article 13 hereof applicable shall apply to the work required to be done under this Section. As to any such taking, the Net Award shall be distributed as follows:

(i) First to the Tenant, to the extent of and as a first charge against the Net Award, an amount not exceeding the actual cost reasonably incurred by the Tenant of performing its obligations to restore pursuant to this Section and any other obligations under this Lease imposed upon Tenant as the result of the taking.

(ii) The balance of the Net Award, if any, shall be apportioned between the Landlord and the Tenant in the same manner as the balance of a Net Award apportioned under Subsection 12.2(b)(iii).

If there is a taking provided for in this Section and the restoration of the Property results in Improvements of lesser internal leasable area than the Improvements prior to

the taking, Base Rent shall be abated from and after the date of taking in proportion to the diminution of the total internal leaseable area of the Improvements, but otherwise there shall be no abatement in or reduction of the rent or other charges.

(b) In the event a taking provided for in this Section 12.4 so diminishes or impairs the use of the Improvements that notwithstanding restoration the Tenant would be unable to make any kind of economic use of the remainder thereof, for the purposes permitted by this Lease, the Tenant, at its option exercisable by notice to Landlord given not later than ninety (90) days after title is vested in the condemning authority in such Proceeding or pursuant to such Agreement, may terminate this Lease as of such date. The rent, Impositions or other charges herein provided to be paid by the Tenant shall be apportioned to said date and any amounts prepaid by Tenant in excess of its liability based on such apportionment shall be refunded by the Landlord to the Tenant. In the event Tenant elects to so terminate this Lease, the Net Award shall be allocated and distributed in the manner provided in Section 12.2, except that the value of Landlord's interest in the Net Award determined under Section 12.2(a)(x) shall be reduced by the value of the portion of the Leased Premises, the Improvements and the Building Service Equipment not taken and the amount to be applied under Section 12.2(b)(i) shall be reduced by the

discounted fair rental value of the portion of the Leased Premises not taken for the unexpired portion of the term of this Lease.

12.5 If there shall be a taking or conveyance, as aforesaid, of any vault or other space not included within the Leased Premises as above described, or a taking or conveyance which shall result in the removal of projecting portions of any Improvements upon any street for which the Tenant is not entitled to compensation as a matter of law, or a taking or conveyance of an underground right-of-way for a subway, conduit or other purpose not necessitating the demolition or substantial alteration of any portion of any of the Improvements, any such taking or conveyance shall not be treated as a taking of any part of the Leased Premises or the Property for the purposes of this Article, this Lease shall not be effected by any such taking or conveyance of the nature in this Section 12.5 referred to, any alteration required because of a taking or conveyance of the nature in this Section 12.5 provided, shall be done by the Tenant, and the provisions and conditions of Article 13 shall apply to any alteration required to be done under this Section.

12.6 If the use of the Leased Premises or the Improvements, or any part thereof, shall be taken by the exercise of the power of eminent domain for a period of time, definite or indefinite, whether or not for the entire unexpired portion of the term of this Lease or for a period

greater than the same, this Lease shall, nevertheless, continue in full force and effect and the Tenant shall have the right (except as hereinafter provided) to receive the entire Award (which Award, in the case provided for by this Section 12.6, is called the "Use Award") which is allocable to that part of the unexpired portion of the term of this Lease to which the Use Award relates. The Tenant shall have no rights against the Landlord by reason of such taking, including, without limitation, any right to an abatement of rent or any other charges payable by the Tenant, or the performance of any obligation to be performed by the Tenant, and the rights and liabilities of the Landlord and the Tenant to each other shall be the same as if there had been no such taking. Notwithstanding, the Tenant and the Leasehold Mortgagee, in cooperation with the Landlord, shall have the right to participate in negotiations relative to any such taking or the Use Award in order to be certain that their respective interests thereunder are protected, with all cost and expense thereof to be a first charge against the Use Award.

The Use Award shall be paid, however, by the Tenant to The Depository for application, as hereinafter set forth, after deduction therefrom of all cost and expense reasonably incurred incident to obtaining such Use Award.

The Use Award shall be held and disbursed as follows:

(a) If the same is payable in monthly or other periodic installments, such installments shall as received by the Depository be applied on account of, and to the extent of, the Tenant's obligations on account of annual rental and proportionate shares of other charges payable by the Tenant on account of such period; and the dollar value of obligations to be performed by the Tenant shall, on a proportionate basis, also be satisfied from such periodic installments.

Any balance of such periodic installments remaining shall be applied to or for the account of the Tenant, except that if such taking shall be for a period extending beyond the expiration of the term of this Lease, the Landlord (or such Institution) shall be entitled to the entire Use Award attributable to the period after such expiration;

(b) Where the Use Award is in a lump sum or payable in installments less frequently than quarterly, the lump sum or other installments, together with investment earnings thereon, if any, shall be divided by the number of months included in the period for which such Award has been made and the quotient thereof shall be applied monthly, in accordance with subparagraph (a) above; and

(c) To the extent an Use Award is allocable to the cost of repairs and restoration following the

termination of a temporary taking, the same shall be treated as Proceeds, within the meaning of Article 13, below, and applied consistent therewith.

ARTICLE 13

CONDITIONS GOVERNING REPAIR, RESTORATION, CHANGES AND ALTERATIONS

13.1 Whenever, under the provisions of Article 11 or Article 12 of this Lease, the Tenant shall be obligated to restore, rebuild, repair, or make alterations to the Property, the cost of which will exceed One Hundred and Fifty Thousand and 00/100 Dollars (\$150,000.00) (or, in and after the twenty-fifth Lease Year, the amount being equivalent in value at the time in question to \$150,000 in 1982, herein called the "value equivalent"), the amount of the Proceeds, or the amount of the Net Award (which amounts are hereinafter collectively referred to in this Article as the "Amounts"), as the case may be, shall be held and disbursed in accordance with the following provisions:

(a) Amounts on account of any casualty loss, Proceeding or Agreement (hereinafter collectively referred to as the "Event"), shall be delivered to the Depository as soon as available and in all events prior to commencement of the work of repair and restoration (hereinafter referred to as the "Work");

(b) Tenant shall submit to Landlord, for the approval of Landlord, a schedule of the estimated cost of the Work to be performed in accordance with the plans and specifications approved by the Landlord pursuant to Section 13.2;

(c) Before the commencement of the Work, Tenant shall pay to the Depository a sum equal to the amount by which the estimated cost of the Work, as determined by Landlord on the basis of Tenant's estimate as approved by the Landlord, exceeds the Amounts theretofor delivered to the Depository under Section 13.1(a);

(d) During the progress of the Work, Tenant shall submit to Landlord and the Depository, at periodic intervals, but not more frequently than monthly, a certificate approved as to accuracy by Tenant's architect or engineer and by any consultant engaged by Landlord under subparagraph (f) of this Section 13.1, showing the cost of labor and materials incorporated into the Work, or suitably stored at the Leased Premises, during the period specified in the certificate and the amount properly due and owing to contractors and suppliers on account thereof, which period shall not include any part of the period covered by any other such certificate, and Depository upon receipt of such certificate and approval(s) thereof shall pay to Tenant, from the deposit, if any, made with it by Tenant, and, upon the

exhaustion thereof, from the Amounts, ninety percent (90%) of the lesser of such cost or amounts due and owing to contractors and suppliers on account thereof (disregarding any retainage which Tenant may have the right to withhold from amounts due and owing to contractors and suppliers, but which shall include, in making such computation, amounts due and owing to contractors and suppliers on account of work previously done and certified but, as to which, ninety percent (90%) payment thereof has not been made), as shown by such certificate. When required by Landlord and as a condition to any payment by Depository, evidence satisfactory to the Landlord shall be furnished to the effect that the Depository is holding sums so deposited and Amounts remaining undisbursed which are sufficient for the payment of all remaining costs of the Work. If such evidence shall indicate the Depository is not holding funds which are so sufficient, the Tenant shall forthwith deposit with the Depository the amount of the deficit, which it shall hold and disburse as above set forth.

(e) Upon completion of the Work, and delivery to Landlord and Depository of a certificate from Tenant that the Work has been completed and all bills for labor and materials incurred in connection therewith have been paid, supported by a surety company bond or

title evidence for which provision is hereinafter made, assuring such payment, together with a certificate from the Tenant's architect or engineer that the Work has been completed in accordance with the Final Working Drawings and Specifications (as amended, with Landlord's approval), the Depository shall, in the case of Amounts which are Proceeds of insurance, pay the balance in its possession to the Tenant, and, in the case of the Proceeds of any Proceeding or Agreement, apply the balance first to reimbursement to Tenant for any amounts required to be deposited by Tenant under (c) or (d) and then to the Landlord, the Tenant and anyone claiming by, through or under the Tenant (including the Leasehold Mortgagee), those portions of any balance in Depository's possession to which the respective parties may be entitled pursuant to Section 12.4(a)(ii); and

(f) If Landlord determines that, prior to giving its approval to any plans and specifications or estimated schedule of costs, or before honoring certificates calling for payment from the funds to be deposited with Landlord, it is appropriate to retain, for itself, independent professional assistance of an architectural or engineering consultant, Landlord shall have the right so to do, and, if the Tenant shall not be proceeding as required hereunder with respect to prosecution of the Work, the reasonable fees and

expenses of such consultant for such services shall be paid by Tenant and shall be treated as a part of the cost of the Work in determining amounts required to be made available for such purposes.

13.2 Any restoration, rebuilding, repair, or alteration undertaken by Tenant pursuant to Article 11 or 12 of this Lease the cost of which will exceed One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) (or, in and after the twenty-fifth Lease Year, the value equivalent) or any construction requiring approval of the Landlord under Section 8.1 hereof shall produce Improvements conforming to the Final Working Drawings and Specifications identified in Exhibit "C" attached hereto, or in accordance with such amended working drawings and specifications as from time to time Tenant may propose and Landlord may approve. In the event that Tenant shall propose such amended working drawings and specifications, Tenant shall comply with the provisions of the Design Review Procedure attached hereto as Exhibit "D", and the provisions of Sections 7.2, 7.3(c) and 7.4 through 7.11, inclusive, of this Lease shall be applicable to such restoration, rebuilding, repair, or alteration.

13.3 Reconstruction, demolition, subtractions, additions, extensions or changes which Tenant proposes to make in accordance with the terms of Article 8 hereof, shall be subject to this Article, by which it is intended that such changes or alterations shall be treated as being attributable

to an Event, within the meaning of Section 13.1 hereof, the changes or alterations shall be treated as Work within the meaning of Section 13.1, and all requirements in Section 13.1, dealing with the conditions under which the Work may proceed, shall be applicable to such changes or alterations, except that no deposit need be made with the Depository if, in fact, the changes or alterations proposed do not arise from an Event of Default.

13.4 As to all Work governed by this Article (including Article 11 Work), the Tenant shall promptly commence and diligently complete the same within a reasonable time, subject only to delays occasioned by timing of receipts of Amounts, claims arising from an Event, acts of God, general unavailability of labor or materials, governmental restrictions or like causes beyond the reasonable control of the Tenant, but financial inability (except delays in pursuing claims for and receipts of Amounts) to proceed shall never be treated as a cause beyond the Tenant's control.

13.5 Whenever payments are made to or for the account of the Tenant under this Article, the Landlord and/or the Depository shall be entitled to require, concurrently therewith, assurance, by means of a surety company bond, title insurance or an opinion from a reputable attorney acceptable to Landlord that no claims on account of mechanics' or materialmen's liens may arise on account of work performed or materials supplied covered by the Tenant's certificate, on the basis of which the Depository makes such payment.

ARTICLE 14

WASTE

14.1 The Tenant covenants not to do or suffer any waste or damage, disfigurement or injury to the Property, or permit or suffer any overloading of the floors of the Improvements thereof.

ARTICLE 15

INSPECTION OF PREMISES

15.1 The Tenant agrees to permit the Landlord, and its authorized representatives, to enter the Property at all times during usual business hours for the purpose of inspecting the same and, for the purpose of making any necessary repairs to the Property or performing any work therein that the Tenant has failed to make or perform and which Landlord may determine to be necessary to comply with any laws, ordinances, rules, regulations or requirements of any public authority or to prevent waste or deterioration in connection with the Property. The Landlord shall not be entitled to exercise rights hereunder other than inspection except after the expiration of any grace periods available to Tenant or except where Landlord shall determine that prompt attention is required to prevent injury to persons or property or to the Improvements, in which latter situation Landlord shall give to Tenant such notice, if any, as may be appropriate in the circumstances.

Nothing herein shall imply any duty upon the part of the Landlord to do any such work which, under any provision of this Lease, the Tenant may be required to perform, and the performance thereof by the Landlord shall not constitute a waiver of the Tenant's default in failing to perform the same.

The Landlord may, during the progress of any work performed by it on the Leased Premises, keep and store upon the Leased Premises, in a manner that will not interfere substantially with the rights of any subtenant, all necessary materials, tools and equipment. The Landlord shall not, in any event, be liable for inconvenience, annoyance, disturbance, loss of business, or other direct or consequential damage to the Tenant by reason of making repairs or the performance of any work on the Leased Premises, or on account of bringing materials, supplies and equipment onto or through the Leased Premises during the course thereof, and the obligations of the Tenant under this Lease shall not thereby be affected in any manner whatsoever.

15.2 The Landlord is hereby given the right during usual business hours to enter the Property during the terms for the purpose of showing the same to prospective purchasers, mortgagees or others, where the reasonable business purposes of the Landlord make such display appropriate, and during the final twelve (12) months of the term of this Lease, to exhibit the same to prospective tenants. Where,

under any provision of this Article 15, access is sought by Landlord to areas not normally accessible to the public, Landlord shall give Tenant forty-eight (48) hours' prior notice before entering the Property and Tenant shall make such areas available for entry by Landlord.

ARTICLE 16

PAYMENTS TO PUBLIC UTILITIES

16.1 Tenant shall pay or cause to be paid when due all use and consumption charges and service fees and the like for all public utilities used upon or furnished to the Property during the term hereof, including, without limitation, charges for water, gas, electricity and telephone service.

16.2 In addition to paying for all utility use and consumption charges and service fees as hereinabove required, the Tenant shall also, at its sole cost and expense, procure any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Property of poles, wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any utilities servicing the Property.

ARTICLE 17

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

17.1 The Tenant covenants and agrees that, if it shall at any time fail to make required payments of principal and interest under any Leasehold Mortgage permitted pursuant to

the provisions hereof, or fail to pay any Imposition pursuant to the provisions of Article 4 hereof, or to take out, pay for, maintain or deliver any of the insurance policies provided for in Article 10 hereof, or shall fail to make any other payment, perform any other act or comply with any other covenant on its part to be made, performed or complied with as in this Lease provided, and in any such case such failure shall have continued beyond any grace, permitted delay or notice period herein or in any such Leasehold Mortgage provided for the payment or performance thereof, the Landlord shall have the right, without any obligation so to do, without waiving Landlord's other rights or remedies hereunder and without notice to or demand upon the Tenant in an emergency, or otherwise after ten (10) days' notice, and without waiving, or releasing the Tenant from, any obligations of the Tenant in this Lease contained, pay any such mortgage payment, pay any Imposition, effect any such insurance coverage and pay premiums therefor, and may make any other payment, perform any other act or comply with any other covenant on the part of the Tenant to be made, performed and complied with, as in this Lease provided, in such manner and to such extent as the Landlord may deem desirable, and, in exercising any such rights, pay necessary and incidental reasonable costs and expenses, and employ counsel and incur and pay their reasonable fees and expenses.

17.2 Tenant shall on demand reimburse Landlord for all amounts expended by or on behalf of Landlord under Section 17.1 and the same shall be treated as additional rent hereunder. Interest thereon at the rate hereinafter set forth shall be paid thereon from the date Landlord shall make any such expenditure.

ARTICLE 18

LANDLORD'S REMEDIES AND BREACH

18.1 Upon an "Event of Default" (as defined herein) Landlord shall have the following remedies, in addition to all other rights and remedies provided by law or otherwise provided in this Lease, to which Landlord may resort cumulatively, or in the alternative and in any order:

(a) Landlord may, at Landlord's election, keep this Lease in effect and enforce all of its rights and remedies under this Lease, including the right to recover the rent and other sums as they become due by appropriate legal action.

(b) Landlord may, at Landlord's election, terminate this Lease by giving Tenant written notice of termination. On the giving of the notice, in accordance with the terms of this Lease, all of Tenant's right in the Property shall terminate. Promptly after notice of termination, Tenant shall surrender and vacate the Property in broom clean condition, and Landlord may re-enter and take possession of the Property and eject Tenant or any Occupancy Tenant, or

any other person or persons claiming any right under or through Tenant or eject some and not others or eject none; provided, however, that Landlord shall not eject any Occupancy Tenants who Landlord is required to recognize pursuant to Section 20.1 hereof. This Lease may also be terminated by a judgment specifically providing for termination. Any termination under this Section shall not relieve Tenant from the payment of any sums then due to Landlord or from any claim for damages or rent previously accrued or then accruing against Tenant. In no event shall any one or more of the following actions taken by Landlord, after the occurrence of an Event of Default, in the absence of a written election by Landlord to terminate this Lease, constitute a termination of this Lease:

(i) Appointment of a receiver in order to protect Landlord's interest hereunder;

(ii) Consent to any subletting of the Property or assignment of this Lease by Tenant, whether pursuant to the provisions hereof with relation to assignment or subletting, or otherwise;

(iii) Any other action by Landlord or Landlord's agents intended to mitigate the adverse effects of any breach of this Lease by Tenant, including, without limitation, action to maintain and preserve the Property or any action taken to relet the Property, or any

portions thereof, for the account of Tenant and in the name of Tenant.

(c) Landlord may at Landlord's election re-enter and take possession of the Property, and without terminating this Lease, and at any time from time to time, relet the Property or any part or parts of it for the account and in the names of Tenant or otherwise. Tenant shall nevertheless pay to Landlord on the due dates specified in this Lease all sums required of Tenant under this Lease, plus Landlord's expenses, less the proceeds of any such reletting. No act by or on behalf of Landlord, including those described in subparagraphs (b)(i), (ii) and (iii) above, under this provision shall constitute a termination of Tenant's right to possession under this Lease unless Landlord gives Tenant written notice of termination.

(d) In the event Landlord terminates this Lease, Landlord shall be entitled at Landlord's election to damages in the following sums:

(i) The worth at the time of award of the unpaid rent which has been earned at the time of termination; plus

(ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the fair market rental value reasonably achievable for such period; plus

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the fair market rental value reasonably achievable for such period; and

(iv) Any other amount necessary to compensate Landlord for all detriment proximately caused by Tenant's failure to perform Tenant's obligations under this Lease, or which in the ordinary course of things would be likely to result therefrom including without limitation, the following: (v) expenses for cleaning, repairing or restoring the Property; (w) expenses for altering, remodeling or otherwise improving the Property for the purpose of reletting, including installation of leasehold improvements (whether such installation be funded by a reduction of rent, direct payment or allowance to Tenant, or otherwise); (x) broker's fees, advertising costs of carrying the Property such as taxes and insurance premiums thereon, utilities and security precautions; (y) expenses in retaking possession of the Property; and (z) attorneys' fees and court costs.

(v) The "worth at the time of award" of the amounts referred to in subparagraphs (i) and (ii) above is computed by allowing interest at the rate hereinafter set forth. The "worth at the time of award" of the amount referred to in subparagraph (iii) above is computed by discounting such amount at the discount

rate of the Federal Reserve Bank of Boston at the time of the award.

(vi) For purposes hereof, there shall be treated as Percentage Rent for any period after any default an amount at an annual rate equal to the average annual Percentage Rent which the Tenant was obligated to pay to the Landlord under this Lease either: (y) from the commencement of the term hereof to the date of such default, or (z) during the last three (3) Lease Years prior to the date of such default--whichever is the greater.

(vii) The foregoing provisions respecting damages in the event Landlord terminates this Lease shall not be applicable to a Leasehold Mortgagee which has cured a default on the part of Tenant or which has entered into a new ground lease pursuant to the provisions of Section 23.3(h) following a default by the Tenant and termination of this Lease by Landlord.

18.2 A breach of this Lease shall exist if any of the following events (severally "Event of Default" and collectively "Events of Default") shall occur:

(a) Tenant shall have failed to pay the Base Rent or the Percentage Rent when and as the same shall be due and payable and such failure shall continue for a period of ten (10) days after written notice from Landlord.

(b) Tenant shall have failed to pay any other charge, additional rent, Imposition or any obligation of Tenant requiring the payment of money under the terms of this Lease (other than the payment of Base Rent or Percentage Rent) for thirty (30) days after written notice from Landlord; or

(c) Tenant shall have failed to perform any term, covenant, or condition of this Lease, to be performed by Tenant, except those requiring the payment of money, and Tenant shall have failed to cure the same within thirty (30) days after written notice from Landlord, except that, where such failure could not reasonably be cured within said thirty (30) day period, Tenant shall not be in default, and no Event of Default shall exist, unless Tenant has failed to promptly commence and thereafter be continuing to make diligent and reasonable efforts to cure such failure as soon as practicable; or

(d) Tenant shall have made a general assignment of its assets for the benefit of its creditors; or

(e) Tenant shall have abandoned the Leased Premises;
or

(f) (i) A court shall have made or entered any decree or order adjudging Tenant to be bankrupt or insolvent; (ii) a petition seeking reorganization of Tenant or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any State thereof is filed against Tenant and not dismissed within

sixty (60) days thereafter; (iii) a receiver, trustee or assignee of Tenant in bankruptcy or insolvency or for its property is appointed and not discharged within sixty (60) days thereafter; (iv) a court shall have made or entered any decree directing the winding up or liquidation of Tenant and such decree or order shall have continued for a period of sixty (60) days; or (v) Tenant shall have voluntarily submitted to or filed a petition seeking any such decree or order; or

(g) The sequestration or attachment of or execution or other levy on Tenant's interest in this Lease or the Leased Premises or any Improvements located thereon shall have occurred and Tenant shall have failed to obtain a return or release of such property within sixty (60) days thereafter, or prior to sale pursuant to such levy, whichever first occurs;

(h) Tenant shall have admitted in writing its inability to meet its debts as they mature.

ARTICLE 19

ASSIGNMENT

19.1 This Lease is being entered into as a means of permitting and encouraging the development of the Leased Premises in accordance with the terms hereof and not for speculation in landholding. Tenant acknowledges that, in view of:

(a) the importance of the undertakings set forth herein to the general welfare of the community;

(b) the substantial financing and other public aids that have been and/or will be made available by law, the federal government and the City for the purpose of making such undertakings possible;

(c) the importance of the identity of the parties in control of the Tenant and the Property; and

(d) the fact that a transfer of all or part of the legal or beneficial ownership in the Tenant, or any other act or transaction involving or resulting in a significant change in the ownership or distribution of such ownership is for practical purposes a transfer or disposition of the interest in the Property then owned by Tenant;

the qualifications and identity of Tenant are of particular concern to the community and the Landlord. Tenant further recognizes that it is because of such qualifications and identity that the Landlord is entering into this Lease, and, in so doing, is further willing to accept and rely on the obligations of Tenant for the faithful performance of all undertakings and covenants hereby to be performed by it.

19.2 For the reasons set forth in Section 19.1 hereof and except as otherwise provided herein in Article 20 hereof and in Article 23 hereof, it is hereby agreed that, commencing on the Lease Commencement Date and continuing until the

fifth (5th) anniversary of the issuance by the Landlord of the Certificate of Completion with respect to the Improvements:

(a) No transfer (by assignment or otherwise) of all or any part of Tenant's rights under this Lease or of the Tenant's interest in the leasehold estate created hereby or the Property shall be made or suffered.

(b) No transfer or change of legal or beneficial interests in Tenant (or any successor entity to the Tenant permitted hereunder) and no transfer of any partnership interests in the Tenant by sale, pledge or otherwise, shall be made or suffered.

The Prohibitions expressed in (a) and (b) above against transfer of Tenant's interest under this Lease and against transfer of a legal or beneficial interest in Tenant shall not apply to the following:

(i) a transfer by reason of death of an individual;

(ii) the granting of a Leasehold Mortgage, or to a transfer by the holder of a Leasehold Mortgage or by any party holding in good faith by, through or under a Leasehold Mortgage;

(iii) transfers not exceeding in the aggregate ten percent (10%) of the interests in Tenant (legal or beneficial) or in any entity having an interest in Tenant; or

(iv) transfers by James Sullivan of any interests owned by him to his wife, children or trusts for the

benefit of his wife or children, but only if such transfers do not in the aggregate result in the transfer of a controlling interest in Tenant.

After the fifth (5th) anniversary of the issuance of the Certificate of Completion there may be made a transfer otherwise prohibited prior to such time, but only with the prior written consent of the Landlord. Landlord agrees not unreasonably to withhold such consent, taking into consideration the reputation, experience in management of real estate and financial capacity of any proposed transferee to perform the obligations of Tenant hereunder. Where Landlord has given such consent to Tenant to effect any proposed transfer, such transfer shall be effective (in the case of a transfer of the leasehold interest hereunder) only if the Improvements are transferred concurrently therewith (as hereinafter set forth) and (in all cases) only upon compliance with the following conditions:

(a) At the time of such transfer, there shall not exist hereunder any Event of Default or any event which would become an Event of Default with notice and the passage of time therefrom;

(b) The Tenant shall have furnished or caused to be furnished to Landlord assurances reasonably satisfactory to Landlord that the transferee is not insolvent and will not be rendered insolvent by assumption of the obligations of the Tenant under this Lease.

For the purposes of this provision, insolvency shall mean and include inability to meet the obligations of the transferee as and when the same become due and payable; and

(c) In the case of a transfer of the leasehold interest hereunder, such transferee shall assume, by written instrument reasonably satisfactory to the Landlord, directly with the Landlord, the obligations on the part of the Tenant to be performed and observed under this Lease.

No transfer of the Tenant's interest under this Lease shall be effective unless accomplished by suitable written instrument recorded in the office in which, by law, records relating to real estate in Boston, Massachusetts, are required to be filed to be effective against bona fide purchasers for value of such property, and a true and correct copy thereof, certified as such by the transferor and the transferee, shall have been sent to the Landlord in the same fashion in which notices are required to be given under the terms of this Lease.

19.4. For the purposes of this Article 19:

(a) The Tenant agrees that the ownership of this Lease and all of the Tenant's rights, title and interest in and to the Improvements shall be non-separable, and that an attempt to transfer any of the Tenant's right, title or interest in the Improvements shall be null and void and a breach of this Lease, unless accompanied by a transfer and assignment of the Tenant's estate under this Lease.

(b) References herein to transfer of the Tenant's interest in this Lease or the Tenant's estate mean a sale, assignment or other disposition of the entire interest of the Tenant in the Property. Partial transfers shall not be permitted, except for subleases, to which reference is specifically hereinafter made in Article 20.

A sublease of all or substantially all the Property for any material part of the term of this Lease (which shall in any event mean a period which is five (5) years or more in duration) shall, for the purposes of this Article 19, be a transfer.

(c) Any transfer which is not permitted hereby and which is made without Landlord's consent shall be void and of no force or effect.

ARTICLE 20

SUBLETTING

20.1 Subject to the use restrictions contained in this Lease, and subject to this Section and the other terms and conditions of this Lease, Tenant may sublet any part of the Property at any time and from time to time to such Occupancy Tenants upon such terms and conditions as Tenant shall deem fit and proper, provided, that, before subletting any part or all of the Improvements at ground level or on the second floor, Tenant shall, from time to time, submit in writing to Landlord for Landlord's approval, a program (the "Leasing Program") for the leasing of the space on the first and

second floors for the uses described in Section 5.2 of this Lease, setting forth in detail the nature of the particular retail uses proposed, the general area in the Improvements which each such use shall occupy, and such other information as Landlord may require. Notwithstanding the preceding sentence, once Tenant has obtained approval of a Leasing Program it may proceed to make any subletting of space at ground level or on the second floor without further submission to Landlord, except to the extent any such subletting would be inconsistent with the approved Leasing Program. In the event of any inconsistency, Tenant shall obtain Landlord's approval, as aforesaid, before proceeding with any such subletting. Landlord shall within ten (10) days of each such submission of a Leasing Program notify Tenant in writing of its approval or disapproval thereof. If no notice of disapproval is given to Tenant within ten (10) days after Landlord's receipt of any such submission, the proposed Leasing Program shall be deemed approved. Tenant shall have absolute authority to sublet any retail space to any occupant upon any terms Tenant may deem appropriate provided only that each such sublease be in conformity with the Leasing Program then in effect.

20.2 Landlord hereby agrees, for the benefit of any Occupancy Tenant under any sublease for use or occupancy of space in or on the Improvements or the Property which meet the requirements of this Article 20 and which meet the

following criteria, that, upon termination of this Lease (and notwithstanding any contrary provision required to be included in such leases pursuant to Section 20.3, below, but only as long as such Occupancy Tenant has satisfied its attornment obligations as provided in said Section 20.3) it will recognize and give effect to all such subleases then in effect which (a) have priority over any Leasehold Mortgage or as to which the holders of any Leasehold Mortgage have entered into an agreement to recognize and give effect to such sublease in the event of a foreclosure of any Leasehold Mortgage and (b) are so-called "net" leases containing requirements for the payment by such Occupancy Tenant of rental in monthly installments and additional rental for increases in real estate taxes and operating expenses as may have been (at the time of execution of such sublease) customary in leases of first class office building space in the City of Boston. Landlord shall enter into recordable instruments with any such Occupancy Tenants, as requested by the Tenant, embodying the provisions of this Section 20.2 provided that any such instrument requires, as a condition of the Landlord's obligation, that such Occupancy Tenant shall attorn to Landlord simultaneously with such termination, (i.e., each such Occupancy Tenant shall agree directly with the Landlord, by written instrument reasonably satisfactory to the Landlord, that it will perform all its obligations as subtenant under such sublease for the benefit of Landlord, as if Landlord were the sub-landlord named in the sublease.)

The Tenant covenants and agrees that in the event of the cancellation or termination of this Lease prior to the expiration of the term hereof, unless Landlord shall have previously agreed in writing to recognize any such leases or subleases following the expiration or sooner termination of this Lease, Landlord shall have the option to terminate or cancel each such lease or sublease; provided, with regard to (i) leases or subleases which Landlord shall have agreed in writing to so recognize and (ii) leases or subleases which Landlord does not elect to so cancel or terminate, the Occupancy Tenant under each such lease or sublease shall make full and complete attornment to Landlord for the balance of the term of such lease or sublease with the same force and effect as though said lease or sublease were originally made directly from the Landlord to the Occupancy Tenant.

20.3 Each sublease entered into by the Tenant, shall contain provisions substantially similar to the following provisions, unless Landlord shall otherwise specifically agree:

"If, at any time during the term of this lease, the landlord of the demised premises shall be the holder of a leasehold estate covering premises which include the demised premises, and if such leasehold estate shall terminate or be terminated for any reason, the lessee agrees, at the election and upon demand of any owner of the premises which include the demised premises, to attorn, from time to time, to any such owner, upon the terms and conditions set forth herein, for the remainder of the term demised by this lease. The foregoing provisions shall inure to the benefit of any such owner, shall apply to the tenancy of the lessee hereunder, and shall be self-operative upon any such demand, without requiring any further instrument

to give effect to said provisions. The lessee hereunder, however, upon demand of any such owner, agrees to execute, from time to time, an instrument in confirmation of the foregoing provisions, satisfactory to such owner, in which the lessee shall acknowledge such attornment and shall set forth the terms and conditions of its tenancy, which shall be the same as those set forth herein and shall apply for the remainder of the term originally demised in this lease. However, until such owner shall require such attornment, or shall otherwise elect, the lessee shall pay to such owner, from and after the time of such termination, the rent and all other charges payable by the lessee and shall perform, for the benefit of such owner, all obligations of the lessee to be performed under its lease. Nothing contained in this paragraph shall be construed to impair any right, privilege or option of any such owner."

20.4 Notwithstanding the foregoing, no subletting shall be made to any Occupancy Tenant of space on the first or second floors of the Improvements if the terms thereof would be inconsistent with Tenant's Leasing Program, a copy of which is attached hereto and made a part hereof as Exhibit"LP". Such Leasing Program shall not be modified without Landlord's prior written approval.

ARTICLE 21

LANDLORD'S SECURITY INTEREST; COVENANT AGAINST ENCUMBRANCES; ASSIGNMENT OF SUBLEASES

21.1 Further to secure the performance of all the obligations of the Tenant under this Lease, the Tenant hereby grants, bargains, sells and mortgages to the Landlord all right, title and interest of the Tenant in and to all equipment, goods, chattels and personal property located upon the Property and owned by the Tenant, and agrees to execute such financing statements as may be required by the

Uniform Commercial Code as enacted and in force in the Commonwealth of Massachusetts, from time to time, to perfect the security interest intended to be created hereby. The Tenant hereby assigns to the Landlord all the rents, issues, profits and income under all present and future leases or subleases of all or any portion of the Property to secure the payment of the rents and all other charges payable by the Tenant under this Lease, as well as to secure the performance of all the covenants and provisions of the Tenant under this Lease, the non-occurrence of conditions under this Lease which confer upon the Landlord the right to terminate the same, or cause the termination of the same; and the Landlord shall be entitled, as a matter of right, to have a receiver appointed to take possession of the Property with power to collect the rents, issues, profits and income of the Property and relet the same under order of court or otherwise.

The Landlord agrees that, until a default shall occur hereunder, as to which notice has been given and the time within which to cure has elapsed, the Tenant may, subject to the rights and obligations of any Leasehold Mortgagee set out under Article 23 hereof (and whether such rights exist under its Leasehold Mortgage or documents given to it as supplemental security for its loan) collect, receive and enjoy the rents, issues, profits and income of the Leased Premises, but the rents shall not be collected more than one month in advance of the due date thereof.

21.2 The Tenant shall have no right or power to, and the Tenant shall not, in any way, encumber the fee simple title of the Landlord in and to the Leased Premises or the interest of the Landlord in the Improvements and the Building Service Equipment, nor shall such fee simple estate or other interest of the Landlord be in any way subject to any claim against the Tenant by way of lien, or otherwise, whether arising by operation of law, by express or implied contract or in any other manner, and any such encumbrance or claim by way of lien or otherwise upon the Leased Premises or the Improvements, whether arising by operation of law, by any act or omission of the Tenant or in any other manner, shall accrue only against the leasehold estate of the Tenant and the interest of the Tenant in the Improvements and the Building Service Equipment.

If any such encumbrance or claim by way of lien or otherwise shall exist or be asserted against the fee simple title of the Landlord in and to the Leased Premises or against the interest of the Landlord in the Improvements and the Building Service Equipment, then, in addition to any other right or remedy which the Landlord may have under this Lease or at law or in equity, the Landlord shall have the right, without any obligation so to do, to discharge or pay the same, including the payment of penalties, interest and costs claimed to be due, provided Tenant shall first have been notified of Landlord's intent to take such action and

Tenant shall have failed to pay or cause to be discharged such encumbrance or lien within thirty (30) days thereafter. All amounts paid and all costs and expenses incurred by the Landlord (including reasonable attorneys' fees) pursuant to the provisions of this Section, together with interest thereon from the date of any payment or expenditure by Landlord at the annual rate hereinafter set forth, shall constitute additional rent hereunder and shall be payable to the Landlord on demand.

21.3 The Tenant hereby assigns to the Landlord all existing subleases affecting the Leased Premises and the Property, or any part hereof, and shall and does hereby assign any future subleases to the Landlord upon execution thereof, as further security for the payment of the rent reserved hereunder and for the performance of the covenants and provisions in this Lease contained. Such assignment of future subleases to the Landlord shall be in form satisfactory to the Landlord, and this assignment and any future assignments shall permit the Tenant to continue to collect the rent falling due under such subleases, but not more than one month in advance, so long as there shall be no default under this Lease as to which notice has been given.

The Tenant covenants and agrees under this assignment and under any future assignment that it will not modify any such subleases, so as to reduce the rent, shorten the term or otherwise reduce to any material extent the obligations

of any Occupancy Tenant under its sublease, provided that the foregoing shall in no way limit or restrict Tenant's ability to exercise any rights or remedies (including termination) in the event of default by an Occupancy Tenant under its sublease. The Tenant agrees to execute such instruments in confirmation of this assignment, containing such terms and provisions as the Landlord may reasonably require, consistent with the provisions of this Section 21.3.

21.4 The Tenant covenants and agrees to keep, perform and observe all the terms, covenants, provisions and conditions required to be performed and observed by the Tenant as landlord or sub-landlord under each sublease now or hereafter made, to the end that all things shall be done which are necessary to keep unimpaired the Tenant's rights as landlord or sub-landlord under each lease or sublease, and diligently to pursue the remedies legally available to the Tenant as landlord or sub-landlord to require each Occupancy Tenant to keep, perform and observe all of the covenants, provisions and conditions contained in such sublease on the part of such lessee or sublessee to be kept, performed and observed. In the event that the Tenant shall neglect, refuse or fail so to do, the Landlord shall, after fifteen (15) days prior notice to Tenant of Landlord's intent to do so, have the right, without limiting other remedies available to Landlord, to perform and comply with such sublease covenants, agreements and provisions, or may,

in the name of the Tenant, pursue all remedies available to the Tenant as landlord or sub-landlord to enforce compliance by said lessee or sublessee with said sublease covenants, agreements and provisions, and any and all sums expended by the Landlord in performance and compliance therewith, or in the enforcement of such performance or compliance, including costs, expenses and attorneys' fees, shall bear interest from the date of any such expenditures at the annual rate hereinafter set forth until repaid, and shall be paid by the Tenant to the Landlord upon demand and shall constitute additional rent hereunder.

21.5 The assignment by the Tenant of the Tenant's interest in any sublease, or the rents payable thereunder, shall not constitute an assumption by the Landlord of any obligations of the landlord or sub-landlord thereunder, unless and until the Landlord shall specifically otherwise elect; and all subleases executed by the Tenant shall so provide, unless the Landlord shall otherwise consent in writing.

21.6 So long as this Lease shall be in effect and no default shall exist hereunder and if the interested Leasehold Mortgagee shall be in compliance with provisions hereof then applicable to it, then the rights and interests granted to Landlord under the provisions of Sections 21.1 and 21.3 of this Article 21 shall in all events be subject and subordinate to the rights and interests of such Leasehold Mortgagee

under all the terms and provisions of any such Leasehold Mortgage and any other instrument or agreement given to secure or in connection with its loan to Tenant.

ARTICLE 22

TITLE TO IMPROVEMENTS; SURRENDER OF THE PROPERTY

22.1 Landlord and Tenant acknowledge and agree that title to the Improvements and the Building Service Equipment is, shall be and shall remain in the Tenant until the termination of this Lease, however the same occurs. However, Tenant agrees that its interest in the Improvements and the Building Service Equipment shall become subject to the terms and conditions of this Lease and that any grantees or assignees of its interest in the Improvements, the Building Service Equipment or this Lease shall take subject to and be bound by the terms and conditions of this Lease, expressly including the following provisions:

(a) Upon the expiration or earlier termination of this Lease, however the same occurs, title to the Improvements and the Building Service Equipment shall automatically vest in the Landlord and the Landlord shall be the sole and absolute owner thereof, free of any right, title, interest or estate of the Tenant therein, without the execution of any further instrument and without payment of any money or other consideration therefor, except, only, that in the event of the termination of this Lease under circumstances allowing the Leasehold Mortgagee to obtain a new lease under

the provisions of Section 23.3(h) and if, at that time, the Leasehold Mortgagee shall exercise its rights under said Section 23.3(h), then the Tenant's interest in the Improvements and the Building Service Equipment, to the extent then existing, shall automatically pass to, vest in and belong to the Leasehold Mortgagee, or any permitted successor to the Leasehold Mortgagee, until the termination of such new lease, however the same occurs. The Tenant shall execute such further assurances of title as may be requisite. The Tenant hereby grants, releases, transfers, sets over, assigns and conveys to the Landlord all of its right, title and interest in and to the Improvements and the Building Service Equipment effective upon the termination or expiration of this Lease. Nothing herein contained shall adversely affect Tenant's title to the Improvements and the Building Service Equipment and any right that the Tenant may have to quiet enjoyment and possession so long as this Lease shall continue in force and effect and the Tenant shall not be in default hereunder. Further, until the termination of this Lease, Tenant alone may claim depreciation of the Improvements and Building Service Equipment for all taxation purposes to the extent that it may legally be entitled to make such claim.

(b) The Tenant shall, upon such termination, well and truly surrender and deliver the Leased Premises and deliver the Improvements and the Building Service Equipment, excepting any subtenants' movable trade fixtures, machinery,

equipment and personal property (without any payment or allowance whatever to the Tenant on account of, or for, the Improvements and the Building Service Equipment or any part thereof) to the possession and use of the Landlord, without fraud or delay and in the same order and condition originally constructed, as from time to time altered not in violation of this Lease, ordinary wear and tear only excepted.

(c) The Tenant covenants and agrees that, without the prior written consent of the Landlord, it will not execute and deliver or renew any sublease to a subtenant which would extend beyond the then term of this Lease (and, for the purposes of this provision, any rights of extension in any sublease shall be treated as having been exercised by the subtenant), it being the intention of the parties that, except as the Landlord may otherwise agree, the Landlord, at the termination of this Lease, shall be the sole owner of the Property, not subject to any lease, or subtenants' rights of any kind.

(d) The Landlord, upon termination of this Lease for any reason, may, without notice (any notice to quit or intention to re-enter required by law being expressly waived by the Tenant), re-enter upon the Property and possess itself thereof by summary proceedings, ejectment or otherwise, and may dispossess the Tenant and remove the Tenant and all other persons and property from the Property which it may elect so to dispossess, to the extent that it has not

theretofore otherwise agreed, and may enjoy the Property and have the right to receive all rents and other income from the same, without hindrance or interference from the Tenant or anyone claiming by, through or under the Tenant. Any personal property of the Tenant remaining on the Property beyond thirty (30) days after termination of this Lease shall be treated as having been abandoned by it and be retained by the Landlord as its sole property or be disposed of, without liability or accountability, as the Landlord sees fit.

22.2 Tenant shall execute such documentation as Landlord may require to transfer or confirm transfer title to the Improvements and Building Service Equipment to Landlord, as hereinabove set forth.

22.3 If any rule of law shall forbid or frustrate the vesting in Landlord of the title to the Improvements and the Building Service Equipment in accordance with the provisions of this Article, then such vesting of title shall occur not later than twenty-one (21) years after the death of the last survivor of Michael A. White, Laurie A. White or Elizabeth E. White, all presently of Lincoln, Massachusetts. In the event such vesting shall occur due to the provisions of this paragraph and prior to the expiration or other termination of this Lease, this Lease shall continue in full force and effect.

ARTICLE 23

LEASEHOLD MORTGAGES

23.1 Notwithstanding any other provisions of this Lease, the Tenant shall at all times and from time to time have the right to encumber, pledge, or convey all, but not less than all, of its leasehold estate in the Leased Premises, its title to and interest in the Improvements and its title to and interest in the Building Service Equipment by way of a bona fide Leasehold Mortgage (and, where appropriate, by grant of a security interest under the Uniform Commercial Code) to secure the payment of any loan or loans obtained by Tenant to finance only the Improvements and the Building Service Equipment or to refinance any outstanding loan or loans therefor obtained by Tenant for the same purpose; provided, however, that Tenant shall give prior written notice to Landlord of its intent to exercise such rights hereunder, including in such notice the name(s) and address(es) of such Leasehold Mortgagee and any other information regarding Leasehold Mortgage and mortgage documents which Landlord may require.

23.2 (a) If a Leasehold Mortgagee, through the operation of its contract to finance the Improvements and the Building Service Equipment, or by foreclosure, acquires Tenant's entire interests in the Property prior to the completion of the Improvements and the Building Service Equipment, and the Leasehold Mortgagee has complied with the provisions of

Section 23.3(a) hereof, the Leasehold Mortgagee shall have the following options:

(i) complete construction of the Improvements in accordance with the approved Final Working Drawings and Specifications and this Lease, and in all respects comply with the provisions of this Lease, or

(ii) with the prior written consent of Landlord, sell, assign, or transfer, Tenant's entire interests in the Property to a purchaser, assignee or transferee acceptable to Landlord who shall expressly assume all of the covenants, agreements and obligations of the Tenant under this Lease in respect of the Property by written instrument satisfactory to the Landlord and recorded forthwith in the Suffolk County Registry of Deeds, or

(iii) reconvey the entire interests of Tenant in the Property to the Landlord.

(b) To obtain the benefit of one of the options under paragraph 23.2(a), the Leasehold Mortgagee must notify Landlord of the option it elects within sixty (60) days after it shall acquire title to or possession of the Property (whichever shall last occur). In the event that a Leasehold Mortgagee elects to complete construction pursuant to subparagraph (a)(i) above, or sells, assigns, or transfers pursuant to subparagraph (a)(ii) above, the Landlord shall extend the time limits set forth in this Lease only as shall be reasonably

necessary to complete the Improvements and the Building Service Equipment, and upon such completion, the Leasehold Mortgagee or purchaser of the leasehold estate, as the case may be, shall be entitled to the same rights, benefits and privileges available to Tenant hereunder, including Tenant's right to a Certificate of Completion pursuant to Section 7.12.

23.3. If a Leasehold Mortgagee shall, by written notice to the Landlord given within thirty (30) days of the execution, delivery and recording of a Leasehold Mortgage, notify Landlord thereof and of the name and address of the Leasehold Mortgagee for notice purposes, and of the recording reference of its Leasehold Mortgage, and with such notice shall furnish to the Landlord a true copy of its Leasehold Mortgage, Landlord agrees that so long as such Leasehold Mortgage shall remain unsatisfied of record, or until written notice of satisfaction thereof is given by the Leasehold Mortgagee to Landlord (whichever shall first occur) the following provisions shall apply:

(a) Landlord shall, promptly upon receipt of a communication purporting to constitute the notice provided for in the foregoing provisions of this Section 23.3, either provide the Leasehold Mortgagee submitting such communication with a written confirmation of the receipt of such communication and that the same constitutes the notice provided for in the foregoing provisions of this Section 23.3, or notify

the Tenant in writing and such Leasehold Mortgagee of the rejection of such communication as not conforming with the foregoing provisions of this Section 23.3 and specifying the basis for such rejection. Each Leasehold Mortgagee which notifies Landlord in conformity with the foregoing provisions of this Section 23.3 is referred to in the following provisions of this Section 23.3 as a "Qualifying Leasehold Mortgagee";

(b) In the event of any assignment of a Leasehold Mortgage or in the event of a change of address for notice purposes of a Qualifying Leasehold Mortgagee or of an assignee of any such Leasehold Mortgagee, notice of the new name and address for notice purposes shall be provided to Landlord as a condition to the continued availability of the rights hereunder of a Qualifying Leasehold Mortgagee;

(c) There shall be no cancellation, surrender, termination or modification of this Lease by joint action of Landlord and Tenant, or termination of this Lease by unilateral action of Tenant under the provisions of this Lease permitting such termination by Tenant, without in each case first securing the prior written consent of each Qualifying Leasehold Mortgagee;

(d) The Landlord shall, upon giving to Tenant any notice of default, simultaneously give a copy of such notice to each Qualifying Leasehold Mortgagee, and no

notice of default given to Tenant shall be effective until a copy thereof has been given to each Qualifying Leasehold Mortgagee. Wherever in this Lease notice is to be given to a Qualifying Leasehold Mortgagee, a notice addressed to such Qualifying Leasehold Mortgagee at its address specified in accordance with the foregoing provisions of this Section 23.3 and otherwise complying with the terms of the notice provisions of this Lease shall conclusively be treated as having been "given" within the meaning of the respective provisions calling for notice to a Qualifying Leasehold Mortgagee;

(e) Each Qualifying Leasehold Mortgagee shall have the same period, after such notice has been given to it, for remedying any default or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus (x) in the case of a default in the payment of the Base Rent or the Percentage Rent, an additional period of ten (10) days, and (y) in the case of any other default, an additional period of thirty (30) days, and if such default cannot with due diligence be cured within such additional thirty (30) day period, an additional time thereafter, provided that such cure is initiated during such additional thirty (30) day period and thereafter the curing of the same is prosecuted with diligence, and Landlord shall

accept such performance by a Qualifying Leasehold Mortgagee as if performed by Tenant;

(f) Upon the happening of any of the Events of Default set forth in subsections (d), (e), (f), (g) or (h) of Section 18.2 of this Lease, the Landlord shall give notice thereof to each of the Qualifying Leasehold Mortgagees promptly after Landlord shall have knowledge of the happening of such event;

(g) In the case of any default by Tenant which is not susceptible of being cured by any Qualifying Leasehold Mortgagee, Landlord agrees that it will take no action to effect a termination of this Lease by reason of such default without first giving to each Qualifying Leasehold Mortgagee a reasonable period of time after notice under either (d) or (f) above to obtain possession of the Leased Premises and to cure such default, in the case of a default which can be cured upon the obtaining of possession, or to institute foreclosure proceedings and to complete such foreclosure or otherwise to acquire the interest of Tenant under this Lease with diligence and without delay, in the case of a default which cannot be cured by any Qualifying Leasehold Mortgagee; provided, however, (i) that the period for obtaining possession or acquiring the interests of Tenant by foreclosure or otherwise, as the case may be, shall be extended for the period during

which such action is enjoined or stayed, (ii) that such Qualifying Leasehold Mortgagee shall pay or cause to be paid the Base Rent, Percentage Rent and other monetary obligations of Tenant under this Lease as the same become due, and to continue good faith efforts to perform all of Tenant's other obligations under this Lease which are susceptible of being performed by such Qualifying Leasehold Mortgagee, during the period of such forbearance, and (iii) that nothing herein shall require any Qualifying Leasehold Mortgagee to begin or continue such possession or foreclosure proceedings or preclude Landlord from exercising (subject to the provisions of this Article 23) any rights or remedies under this Lease with respect to any other defaults by Tenant during the period of such forbearance;

(h) In the event of a termination of this Lease for any reason, other than by expiration of the term, the Qualifying Leasehold Mortgagee holding the senior Leasehold Mortgage shall have the right, in addition to the foregoing rights, to elect to demand a new lease of the Leased Premises, exercisable by notice in writing to the Landlord within sixty (60) days after the giving of notice by Landlord to each Qualifying Leasehold Mortgagee of such termination, for the balance of the term hereof effective as of the date of such termination, at the Base Rent, Percentage Rent and additional rent

and upon all of the other terms, provisions, covenant and agreements set forth in this Lease except that Landlord shall not be required to warrant and defend the right of possession of the tenant under such new lease against the Tenant herein or anyone claiming by, through or under the Tenant; provided, that, concurrently with the delivery of such notice, the Leasehold Mortgage shall have been performed and thereafter shall continue to perform all obligations of Tenant hereunder capable of being performed by such Qualifying Leasehold Mortgagee which would have accrued hereunder had this Lease remained in force until the time of such delivery. The parties shall act promptly after such notice and performance to execute such new lease. Any such new lease shall be superior and not subordinate to any mortgage upon Landlord's fee interest in the Leased Premises hereafter given; and any such new lease may, at the option of such Qualifying Leasehold Mortgagee, name as tenant a nominee of such Qualifying Leasehold Mortgagee. If as a result of any such termination the Landlord shall succeed to the interests of Tenant under any sublease of the Leased Premises or any portion thereof, Landlord shall execute and deliver an assignment of all such interests to the tenant under the new lease simultaneously with the delivery of such new lease;

(i) The Leasehold Mortgagee shall be given notice of any arbitration or appraisal proceedings under the provisions of this Lease, and shall have the right to intervene therein and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention.

23.4 The term "Leasehold Mortgage", as used in this Article, means one or more Leasehold Mortgages to an Institution which constitute from time to time a first or second lien on Tenant's entire interest in the Property, but in no event shall the aggregate original principal amounts thereof exceed, or be subsequently increased to exceed, Total Project Costs unless the conditions set forth in the following paragraph have been satisfied. Except as set forth in the preceding sentence, the terms of any Leasehold Mortgage may be as the Tenant may negotiate with any Leasehold Mortgagee. The rights in this Article 23 provided may be exercised only by such Institution as is a lienholder in such first or second position which becomes a Qualifying Leasehold Mortgagee and not by any other subordinate Leasehold Mortgagees, all such other subordinate Leasehold Mortgages being hereby expressly prohibited. A deed of trust or other form of security deed shall be treated as the equivalent of a mortgage.

Tenant shall not grant a Leasehold Mortgage securing financing in excess of Total Project Costs unless the following terms are satisfied with respect to the financing secured by such Leasehold Mortgage:

1. The amount of financing shall be such that the Net Cash Flow for the most recently-ended Lease Year shall be equal to or greater than 115% of all annual payments, including debt service, due the Institution on account of such financing. For the purposes of this provision, Net Cash Flow shall be computed without the Allowed Deduction specified in Section 3.1 C.(3)(c);

2. The "loan/value ratio" shall not exceed 0.80. For these purposes "loan/value ratio" means a fraction, the numerator of which is the amount of such financing and the denominator of which is the then fair market value of the Tenant's leasehold interest in the Property (determined by an independent MAI appraiser selected by Tenant and approved by Landlord);

3. The maturity of any such financing shall not be less than ten (10) years and annual payments, including debt service, due the Institution on account of such financing shall remain constant except that a "balloon" payment may be provided at the end of the term of such financing;

4. The documentation for the proposed Leasehold Mortgage must be reasonably satisfactory to counsel for the Landlord and be consistent with the provisions of this Lease; and

5. The Tenant shall reimburse the Landlord for all costs and expenses incurred by Landlord incident to responding

to any approval requested for any such Leasehold Mortgage financing, including the cost of any appraiser or expert hired by Landlord with respect thereto. Such costs and expenses shall be reimbursed to Landlord upon request and shall be promptly paid, whether or not the Landlord shall approve any proposed financing.

6. Solely for purposes of including in the calculation of the Allowed Deductions referred to in Section 3.1, C(3) (c) the amount by which any Leasehold Mortgage exceeds Total Project Costs, Landlord's consent to the granting of such Leasehold Mortgage shall be required, and such consent shall not be unreasonably withheld.

23.5 Notwithstanding anything else herein contained to the contrary, if the holder (who is also a Qualifying Leasehold Mortgagee) of any Leasehold Mortgage expressly permitted hereby and constituting a First Lien on Tenant's leasehold estate shall in good faith and without intent to deprive Landlord of its benefits hereunder foreclose such Leasehold Mortgage and acquire such leasehold estate or in good faith accept a transfer of the Property from Tenant in lieu of foreclosure, or in good faith acquire such leasehold estate pursuant to the provisions of Section 23.3(h), the obligation of the Tenant to pay Percentage Rent shall thereafter cease and be of no further force and effect.

ARTICLE 24

HOLDING OVER

24.1 This Lease shall terminate without further notice at the expiration of the term, unless extended as herein expressly provided. Any holding over by Tenant after expiration shall not constitute a renewal or extension or give Tenant any rights in or to the Property except as expressly provided in this Lease.

ARTICLE 25

NOTICES

25.1 Any notice required or desired to be given pursuant to this Lease shall be in writing with copies directed as indicated below and shall be personally served, or, in lieu of personal service, by depositing same in the United States mail, postage prepaid, certified or registered mail. If such notice shall be addressed to Landlord, the address of Landlord is:

City Hall
Boston, Massachusetts

with a duplicate copy to:

and if addressed to Tenant, the address of Tenant is:

with a duplicate copy to:

Either Landlord or Tenant may change its respective addresses by giving written notice to the other in accordance with the provisions of this paragraph.

Any requests for approvals made by Landlord to Tenant where such approvals shall be deemed granted after a period of non-reply by Landlord shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in bold face type:

"NOTICE

THIS REQUEST FOR APPROVAL REQUIRES IMMEDIATE REPLY
FAILURE TO RESPOND WITHIN _____ DAYS
SHALL RESULT IN AUTOMATIC APPROVAL"

ARTICLE 26

QUIET ENJOYMENT; ENCROACHMENTS AND VAULTS;
LIMITATION OF LIABILITY

26.1 The Landlord covenants that Tenant, upon paying the annual rent and all other charges herein provided for, and observing and keeping the covenants, agreements and conditions of this Lease on its part to be kept, shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Lease, without hindrance or molestation of the Landlord, or any person or persons claiming under or through the Landlord, subject to the Permitted Exceptions and any other matters expressly hereinabove set forth; provided, however, that this covenant shall not extend to any vault, subway entrance, sub-sidewalk, sub-

alley or sub-street, if any, now or hereafter used incident to or as an appurtenance to the Leased Premises, nor to any encroachments of the Improvements on premises other than the Leased Premises, including, but not limited to, the encroachment of any present or future building, wall or structure, either on the Leased Premises or on any property adjacent thereto, and the Landlord shall not be liable for any such encroachments, but the Tenant agrees to indemnify and save harmless the Landlord during the term of this Lease from and against any and all liability, penalty, damages, expense and judgment, whatsoever, on account of the location of any building, wall, structure or other encroachment on or partly on the Leased Premises, or on or partly on any property adjacent thereto.

Neither Landlord nor Tenant (and if Tenant is a partnership, joint venture or trust, no partner, venturer, trustee or beneficiary thereof) shall be personally liable for any of their respective obligations hereunder, and in the event of a claim by either party against the other, the claimant shall look solely to the interests of Landlord or Tenant in the Property, as the case may be, and not to any other assets for satisfaction of such claim.

The Landlord named herein, and its respective successors in title to the Landlord's interest under this Lease, shall be liable only for breaches occurring during its or their respective ownership of such Landlord's interest

hereunder, and the Landlord shall never be liable to the Tenant for consequential damages arising out of defaults by Landlord hereunder except for those consequential damages reasonably foreseeable by Landlord on the basis of facts actually known to it at the time of any such default by Landlord.

26.2 It is expressly understood and agreed that all vaults now or hereafter built, projecting beyond the building line of the Leased Premises, are not included within the premises demised by this Lease, but the Tenant may occupy and use the same during the term of this Lease, subject to such laws, rules and regulations as may be imposed by the appropriate municipal departments with respect thereto. No revocation on the part of any municipal department or authority of the license to maintain and use such vaults shall in any way affect this Lease or the amount of the Base Rent, Percentage Rent or any other charges payable by the Tenant hereunder. If any such license so to maintain and use such vaults shall be revoked, Tenant will, at its sole cost and expense, do and perform all such work as may be necessary to comply with any order revoking the same.

ARTICLE 27

ESTOPPEL CERTIFICATE

27.1 The Tenant and the Landlord agree at any time and from time to time, upon not less than ten (10) days' prior written notice by the one of them requesting the same, to

execute, acknowledge and deliver to the other party a statement in writing, certifying that this Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), and the dates to which the annual rent and other charges have been paid in advance, if any, and stating whether or not, to the best knowledge of the party executing such statement, there are defaults under this Lease, and, if so, specifying each such default, it being intended that any such statement delivered pursuant to this Article may be relied upon by any prospective purchaser or assignee of the fee or leasehold or any Leasehold Mortgagee or assignee of any Leasehold Mortgagee.

ARTICLE 28

REMEDIES CUMULATIVE

28.1 The specified remedies to which the Landlord or Tenant may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which the Landlord or Tenant may be lawfully entitled in case of any breach or threatened breach by the Landlord or Tenant, as the case may be, of any provision of this Lease. The failure of the Landlord or Tenant to insist in any one or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment for the future of such covenant or option.

28.2 A receipt by the Landlord of rents, with knowledge of the breach of any covenant hereof, shall not be a waiver of such breach, and no waiver by the Landlord of any provision of this Lease shall be effective unless in writing and signed by the Landlord. Acceptance by the Landlord (including, without limitation, of any draft remitting the same) of payments in amounts less than due the Landlord shall be treated as payments on account to the extent thereof, notwithstanding any statement or endorsement on or accompanying the same; and the acceptance by the Landlord from any person other than the Tenant on account of the Tenant's obligations shall not be treated as a waiver by the Landlord of any right the Landlord may have on account of an improper transfer of the Tenant's interest under this Lease.

28.3 In addition to the other remedies in this Lease provided, the Landlord or the Tenant shall be entitled to restraint of the other, as the case may be, by injunction of the violation, or attempted or threatened violation, of any of the covenants, conditions and provisions of this Lease.

ARTICLE 29

SURRENDER NOT A MERGER

29.1 The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation thereof, shall not work a merger and shall, at the option of Landlord, operate as an assignment to Landlord of any and/or all subleases of subtenants.

ARTICLE 30

ATTORNEYS' FEES AND OTHER COSTS

30.1 In the event either party shall bring any action or legal proceeding for damages for an alleged breach of any provision of this Lease, or to enforce, protect, determine or establish any term or covenant of this Lease or right of such party, or in the case of Landlord to recover rent or to terminate the tenancy of the Leased Premises, and if, in such event, the party bringing the action or proceeding shall prevail (by settlement or otherwise) or substantially prevail in any such action or legal proceeding, then the prevailing party shall be entitled to recover from the other party as a part of such action or proceedings, or in a separate action brought for that purpose, reasonable attorneys' fees and court costs.

30.2 It is anticipated that, from time to time during the term of this Lease, the Landlord shall require the advice of counsel or other professional consultants in the examination of requests submitted by the Tenant, review and approval of documentation required from time to time to be provided by the Tenant to the Landlord under this Lease, and otherwise in the review of the exercise by the Tenant of any of its rights hereunder.

Accordingly, without limiting the Landlord's right to recover the reasonable fees and expenses of counsel incident to enforcing its obligations on default or breach of condition

by the Tenant, the Tenant agrees to pay to the Landlord reasonable fees and expenses of counsel and other professional consultants (but only to the extent not on the full time payroll of Landlord) incurred by the Landlord on account of services rendered incident to disposition of requests made by the Tenant under this Lease, including, without limitation, review and preparation of documentation required incident thereto, or in services rendered to the Landlord incident to the exercise by the Tenant of its rights hereunder which requires review or preparation of documentation, such as review and preparation of documentation in compliance with the Tenant's request that the Landlord enter into an agreement with a Leasehold Mortgagee of the type referred to in Article 23 hereof, all to the end that the rent paid by the Tenant shall be absolutely net to the Landlord; and the Landlord shall have the right to treat any such fees as additional rent, for the recovery of which, the Landlord shall have all the remedies provided herein; but excluding from the operation of the foregoing provisions of this paragraph all such fees and expenses incurred incident to the Landlord's consideration of submissions or requests for approval, consent or the like where under the terms of this Lease such submission, consent, approval or the like is required as a condition to an act by Tenant.

ARTICLE 31

DEFINITIONS

31.1 Terms defined elsewhere in this Lease shall have the meanings ascribed to them. In addition, the terms defined below shall have the meanings ascribed to them wherever such terms shall appear in the Lease, unless the context otherwise requires.

31.2 The term "Landlord" shall be limited to mean and include only the owner or owners at the time of the fee of the Leased Premises and, in the event of any transfer or transfers of title to the same, the Landlord herein named (and, in case of any subsequent transfers and conveyances, the then grantor) shall be automatically freed and released from and after the date of such transfer and conveyance of all liability as respects the performance of any covenants or obligations on the part of Landlord contained in this Lease thereafter to be performed, it being intended hereby that the covenants and obligations contained in this Lease on the part of Landlord shall, subject as aforesaid, be binding on Landlord, its successors and assigns, only during and in respect of their respective successive periods of ownership of the fee of the Leased Premises.

31.3 The term "Occupancy Tenant" shall mean any tenant, subtenant, licensee, concessionaire or other party of any type entitled to the use or occupancy of space in or on the Improvements or the Property, under a sublease from Tenant,

other than Tenant holding under this Lease; the term "sublease" shall mean any lease or other agreement, written or oral, for the use or occupancy of any such space entered into between Tenant and an Occupancy Tenant. These terms shall refer to any such Occupancy Tenant or sublease whether such Occupancy Tenant or sublease enjoys a position superior or subordinate to Tenant or this Lease.

31.4 The term "person" shall include an individual, corporation, partnership, unincorporated organization or government, or any agency or political subdivision thereof and any other entity, whether or not incorporated. The use of the neuter gender shall include the masculine and the feminine and the use of the singular shall include the plural.

31.5 The terms "rent" or "rents" shall mean the Base Rent monthly reserved, Percentage Rent and all amounts specified in this Lease as additional rent.

31.6 The term "Institution" shall mean any of the following:

(a) a bank, a wholly-owned subsidiary of a bank, insurance company, savings and loan association, trust company or a corporation, trust or association qualifying as a real estate investment trust under the provisions of Section 856 of the Internal Revenue Code, as amended (or like future provisions of such Code) chartered under the laws of The United States of America or any

State thereof, and with a principal place of business in one of such States and a combined capital and surplus account (or, in the case of a mutual company, the equivalent thereof) of not less than \$100,000,000.

(b) an educational institution with a capital endowment of not less than \$100,000,000.

(c) a pension fund established by and for any business corporation or corporations, or by and for any group of employees of a governmental body or of a religious or educational institution or for any trade union, and, in each such case, having a net worth, determined in accordance with sound, conservative accounting practice, of not less than \$100,000,000.

31.7 The term "Leasehold Mortgage" shall mean any mortgage on Tenant's estate created under this Lease which is permitted by the terms of Article 23. The term "Leasehold Mortgagee" shall mean the holder of any Leasehold Mortgage.

31.8 The expression "movable trade fixtures, machinery and equipment", or words of similar import, shall include all furnishings, chattels, personal property and equipment, and all additions, replacements or articles in substitution thereof, of every kind and description which are not now or hereafter affixed and attached to the Improvements and which are not used, or procured for use, in connection with the operation of the Improvements, owned by others than Tenant,

and all furnishings, chattels, personal property and equipment and all additions, replacements or articles in substitution thereof, of every kind and description which are owned by occupants of space in the Improvements or the Leased Premises, whether or not so affixed and attached, so long as the same are readily removable without material damage or injury to the Improvements.

31.9 The term "Plan" shall mean the Downtown Waterfront-Faneuil Hall Urban Renewal Plan as in effect on January 6, 1983.

31.10 The term "Total Project Costs" shall mean all bona-fide costs incurred in construction of the Initial Improvements and off-site improvements relating to or installed in connection with the Initial Improvements, and shall include without limitation the following items: (i) amounts paid to the contractors under construction contracts; (ii) amounts paid to the Architect and to architectural and engineering consultants; (iii) amounts paid for borings, surveys, tests, historical and environmental investigations; (iv) costs of insurance during construction including builders risk, public liability and workmen's compensation; (v) costs of relocation of existing structures and facilities necessitated by construction and all other costs of site preparation; (vi) Base Rent, Impositions and interest paid during construction; (vii) costs of fees, permits, licenses; (viii) a developer's fee of \$1,680,000; (ix) such amounts,

(not to exceed \$3,000,000 in the aggregate) as the Tenant shall justify to Landlord's satisfaction as having been incurred by Tenant on account of unanticipated development costs during construction or as having been incurred by Tenant, during a period of one year from Substantial Completion, for operating losses incurred by the Project and/or for amounts paid as tenant inducement costs; (x) costs of legal, accounting, planning, appraisal and other consulting services, placement fees, commissions, recording fees, title insurance premiums and charges and other costs and charges incurred in connection with the acquisition of the leasehold interest created by this Lease and the construction and financing of the Initial Improvements and such off-site improvements.

31.11 The term "Architect" shall mean only the architectural firm of WZMH Group, Inc., or such substitute therefor as shall be approved by Landlord.

31.12 The term "General Contractor" shall mean only the firm of _____, or such substitute therefor as shall be approved by Landlord.

31.13 The term "term" or "term of this Lease" or "Lease term" shall include properly exercised extensions thereof allowed hereby. Any reference to the "termination of this Lease" shall be deemed to include any termination hereof by expiration, default or otherwise.

31.14 The term "Depository" shall mean a bank or trust company chartered under the laws of the United States of

America or the Commonwealth of Massachusetts with a combined capital and surplus account of not less than \$50,000,000, which shall be selected by the mutual agreement of the Landlord and the Tenant and, in accordance with such terms as the parties may agree and upon provision for indemnity suitable to it, shall agree to act as depository of funds for the purposes provided in this Lease. The Depository shall be under no obligation to cash or collect interest coupons on any securities deposited hereunder issued in coupon form, but shall hold such coupons subject to the order of the Tenant and the provisions of this Lease under which such securities were deposited. Cash deposited with the Depository shall be invested by the Depository in U.S. Treasury bills or notes or such other form of investment as shall be mutually acceptable to Landlord and Tenant and all amounts earned thereon shall be considered part of, and devoted to the purpose of, the deposit with any balance remaining after such purpose has been satisfied to Tenant.

ARTICLE 32

WALKWAY TO THE SEA; MUSEUM; TRASH COMPACTOR

32.1 As an integral part of the obligations of Tenant hereunder with respect to the Property, Tenant will comply with the provisions of Exhibit E attached hereto, with reference to the items identified thereon as Walkway to the Sea, Museum, and Trash Compactor.

ARTICLE 33

NON-DISCRIMINATION; EMPLOYMENT; NO CONFLICTS

33.1 Tenant, for itself and all successors and assigns, agrees that in the redevelopment of the Leased Premises and in all construction activity undertaken with respect thereto:

(a) Tenant will not discriminate against any employee, or applicant for employment because of race, color, sex, religion, age, or national origin. Tenant will take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, color, religion, sex, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Tenant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

(b) Tenant will, in all solicitations or advertisements for employees placed by or on behalf of Tenant, state all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin.

(c) Tenant will send to each labor union or representative of workers with which Tenant has a collective bargaining agreement or other contract or understanding, a notice, to be provided advising the said labor union or workers' representative of Tenant's commitments under Section 202 of Executive Order #11246 of September 24, 1965, as amended,* and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) Tenant will comply with all provisions of Executive Order #11246 of September 24, 1965, as amended,* and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) Tenant will furnish all information and reports required by Executive Order #11246 of September 24, 1965, as amended,* and by the rules, regulations, and orders of the Secretary of Labor, pursuant thereto, and will permit access to Tenant's books, records, and accounts by the Landlord, the Secretary of Housing and

Urban Development, and the Secretary of Labor, for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) In the event of Tenant's noncompliance with the nondiscrimination clauses of this Section 33.1, or with any of the said rules, regulations, or orders, upon written notice to Tenant, and the continuance of such noncompliance for sixty (60) days thereafter, Tenant may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order #11246, of September 24, 1965, as amended,* and such other sanctions may be imposed and remedies invoked as provided in Executive Order #11246, of September 24, 1965, as amended,* or by rule, regulations, or orders of the Secretary of Labor, or as otherwise provided by law.

(g) Tenant will include the provisions of paragraph (a) through (g) of this Section 33.1 in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order #11246 of September 24, 1965, as amended,* so that such provisions will be binding upon each such contractor, subcontractor, or vendor as the case may be. Tenant will take such action with respect to any construction contract, subcontract, or purchase order as the Landlord directs as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event Tenant becomes involved in or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Landlord, Tenant may request the United States to enter into such litigation to protect the interest of the United States.

33.2 Tenant, for itself and all successors and assigns, further agrees that in the redevelopment of the Leased Premises and in all construction activity undertaken with respect thereto, exercise best efforts and shall cause the General Contractor to exercise best efforts to employ workers so that the worker hours on a craft-by-craft basis shall be performed as follows, to the extent permitted by law:

*Executive Order #11246 of September 24, 1965 as amended by Executive Order #11735 of October 13, 1967.

- (a) at least 50% by bona fide City of Boston residents;
- (b) at least 25% by minorities;
- (c) at least 10% by women.

For the purposes of this Section 33.2, worker hours shall include work performed by persons filling apprenticeship and on-the-job training positions. Tenant shall require the General Contractor to notify the City of Boston Employment and Economic Policy Administration, five (5) days in advance of any public advertisement and ten (10) days in advance of any proposed hiring date (five days for construction jobs), of the existence of job opportunities which it intends to establish in connection with construction, stating its desire to be referred Boston residents. Tenant shall further direct the General Contractor to maintain records reasonably necessary to ascertain compliance with this Section 33.2 for at least one (1) year after the issuance of the Certificate of Completion, and to make the same available to the Landlord for inspection upon reasonable notice.

33.3 No member of the Congress of The United States of America shall be admitted to any share or part thereof, or to any benefit to arise from this Lease. No member, official, or employee of the Landlord shall have any personal interest, direct or indirect, in this Lease, nor shall any such member, official or employee participate in any decision relating to this Lease which affects his personal interest or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested.

33.4 No member, official or employee of the Landlord shall be personally liable to Tenant in the event of any default or breach by the Landlord or for any amount which may become due to Tenant or on any obligations under the terms of this Lease.

ARTICLE 34

GENERAL

34.1 The captions used in this Lease are for the purpose of convenience only and shall not be construed to define, limit or extend the meaning of any part of this Lease.

34.2 Any executed copy of this Lease shall be deemed an original for all purposes.

34.3 Time is of the essence for the performance of each covenant and term of this Lease.

34.4 In case any one or more of the provisions contained herein, except for the payment of rent, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

34.5 The language in all parts of this Lease shall in all cases be construed as a whole according to its fair

meaning, and not strictly for or against either Landlord or Tenant. When the context of this Lease requires, the neuter gender includes the masculine, the feminine, a partnership or corporation or joint venture, and the singular includes the plural.

34.6 Each term and provision of this Lease performable by Tenant shall be construed to be both a covenant and a condition, conferring upon Landlord, in the event of breach of any such term or condition, the right to terminate this Lease in accordance with and subject to the provisions of Article 18. The termination or expiration of this Lease shall not terminate obligations of the Tenant which remain unperformed at such time (for example, but without limitation, Tenant's obligations under Section 3.1E, hereof).

34.7 The covenants and agreements contained in this Lease shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, and assigns (to the extent this Lease is assignable under the terms hereof). The Landlord and Tenant each warrant and represent to the other that corporate or other action has been taken by the warranting party to authorize the execution and delivery of this Lease and that this Lease is valid and binding upon it in accordance with its terms.

34.8 The waiver of Landlord or Tenant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition

or any subsequent breach of the same or any other term, covenant or condition herein contained.

34.9 Each party hereto agrees to act reasonably and in good faith with respect to the performance and fulfillment of the terms of each and every covenant and condition contained in this Lease, and with respect to the exercise of each and every right reserved herein, and wherever in this Lease the consent, approval or exercise of judgment or discretion of either party is required or requested, such consent or approval shall not be withheld or delayed unreasonably and such judgment or discretion shall not be exercised arbitrarily, but shall be exercised reasonably and promptly; provided, however, that this Section shall not apply to the exercise of the Landlord's rights under Section 19.2 hereof or to the exercise of the Landlord's rights under provisions of this Lease relating to its approval of matters involving signs and design and appearance of the Leased Premises and the Improvements as to all of which Landlord's approvals shall be given or withheld in its sole discretion. The proviso in the preceding sentence shall only be applicable, however, during the Boston Redevelopment Authority's ownership (or ownership by a successor governmental agency having urban planning responsibility) of the Leased Premises, but in no event shall this limitation be construed in any case as a contractual limitation on the exercise by the Boston Redevelopment Authority (or such successor agency) of the

regulatory powers conferred upon the Boston Redevelopment Authority (or such successor agency) by any provision of general or special law now in effect or hereafter enacted.

34.10 Where interest is provided to be paid hereunder, the rate therefor, on an annualized basis, shall be computed quarterly at the base rate (or its reasonable equivalent) from time to time charged by The First National Bank of Boston, but in no event more than the amount, if any, which would violate applicable usury prohibitions.

34.11 The Landlord hereby agrees that it shall provide to the Tenant not less than thirty (30) days prior written notice with respect to any voluntary transfer or voluntary disposition of the Landlord's interest in the Leased Premises, provided, however, that failure to give such notice shall not affect the validity of any transfer or disposition of the Landlord's interest.

34.12 In recognition of the importance to the Landlord of the maintenance, management and operation of the Property in a first-class manner consistent with that accorded like properties in the City of Boston, the Tenant agrees to have under written contract at all times a real estate management firm with recognized experience in the management of commercial property of type and use similar to the Leased Premises to provide management services customary for premises of the type, use and location of the Leased Premises.

34.13 It is hereby mutually agreed between Landlord and Tenant that Landlord shall not, as the result of the rights granted in this Lease to receive Percentage Rent or any other rights granted herein to Landlord, be deemed or considered as co-owner, co-partner or co-venturer with Tenant in or with respect to the Leased Premises or the Property or with respect to any obligation of the Tenant under any sublease or any other contract, agreement or obligation in respect of the Leased Premises or the Property.

ARTICLE 35

INTEGRATION

35.1 This Lease, and the Exhibits and addenda, if any, attached hereto, constitute the entire agreement between the parties, and there are no agreements or representations between the parties except as expressed herein. No subsequent change or addition to this Lease shall be binding unless in writing and signed by the parties hereto.

In Witness Whereof, the parties hereto have executed this Lease on the respective dates below set forth, under seal.

LANDLORD:

BOSTON REDEVELOPMENT AUTHORITY

Dated:

By _____
Its

TENANT:

MARKETPLACE CENTER LIMITED
PARTNERSHIP

Dated:

By _____
Its

EXHIBIT AFINDINGS PURSUANT TO THE
MASSACHUSETTS ENVIRONMENTAL POLICY ACT

Environmental Considerations. Pursuant to the provisions of Section 61 of Chapter 30 of the Massachusetts General Laws, the Authority hereby finds and determines that the development of Parcel D-10, a parcel of land in the Downtown Waterfront Urban Renewal Area (the "Project"), will not result in significant damage to or impairment of the environment and further finds and determines that all practicable and feasible means and measures have been taken, or will be utilized, to avoid or minimize damage to the environment.

As a result of the comprehensive design review process undertaken by our urban design and planning staff, consultation with the Massachusetts Historical Commission and the Boston Landmarks Commission, and a careful and thorough review of the Final Environmental Impact Report, the Authority makes the following findings regarding the environmental impacts of the Project:

1. Visual Impact. The Authority finds that all feasible means and measures have been taken to minimize the effect of the office tower on its visual environment. These include the reduction in the height and floor area ratio of the building; modification of the building design so that its mass, profile and materials are visually compatible with its environs; and modification of the placement of the building so that views of the Customs Tower will be preserved. Although the Project will have some impact on the visual environment, the Authority finds that the impact will not be adverse.

2. Wind Impacts. The wind tunnel effect study for the Project indicated that pedestrian level wind impacts would not exceed the Authority's criteria. Therefore, the Authority finds that the wind tunnel effects of the Project will not result in significant damage to or impairment of the environment.

3. Shadow Impacts. The placement of the building, the design of its roof and the reduction in its height will minimize the adverse effects of shadows on the pedestrian environment. The Authority finds that the shadows will cause no significant damage to or impairment of the environment.

4. Archeological Impacts. All archeologically significant material removed from the site during excavation will be placed in the Museum of Boston (which is to be a part of the Project) for viewing by the public. The Authority finds that the Project will have no adverse impact on the archeological environment.

5. Parking. Because of the availability of other parking spaces in the immediate area, the Authority finds that the reduction in parking spaces will not result in significant damage to or impairment of the environment.

6. Energy Use. The Authority finds that the energy system designed for the building utilizes all feasible means and measures to conserve energy.

7. Stress Analysis. The Authority finds that the Project will not cause any significant adverse effect in the wind loading on surrounding structures.

8. Sewage Disposal. The Authority finds that the sewage holding tank designed for the Project will prevent any significant damage to the environment from sewage disposal.

9. Transportation and Traffic Impacts. Because there will be no major changes to transportation or traffic in the area surrounding the Project, the Authority finds that the Project will cause no significant damage to the environment.

10. Pedestrian Circulation. The Authority finds that the various on and off-site amenities for the pedestrian, such as the completion of the Walkway-to-the-Sea, will enhance the pedestrian environment.

11. Water Use. The Authority finds that all feasible and practicable means and measures will be taken to conserve water use, including the installation of several water-saving devices.

12. Construction Impact. The Authority finds that all feasible means and measures will be taken to mitigate the impacts of construction on the environment, including the use of noise suppressors to reduce noise levels.

13. Utilities and Services. The Authority finds that all feasible means and measures will be taken to either relocate or mitigate impacts to the existing, on-site utility systems.

14. Air Quality. The Authority finds that because there will be no public parking facility on the site, the development of Parcel D-10 will not cause a significant increase in air pollution.

MARKETPLACE CENTER ASSOCIATES

189 STATE STREET
BOSTON, MA. 02109

617-742-2280

FACT SHEET

Boston Redevelopment Authority Parcel D-10

Marketplace Center

1. Height: 220 ft.
2. Areas:
 - (a) office space - 309,605 sq. ft.
 - (b) retail (including arcades and the "Museum of Boston") - 85,213 sq. ft.
3. Parking: 127 cars in an underground garage
4. Materials:
 - (a) building - granite and glass
 - (b) landscaping - brick and granite paving, and plantings
5. Financing:

The construction financing of the project will be provided by Citicorp Real Estate, Inc., a subsidiary of Citicorp. The two year loan will provide sufficient funds for the construction and development costs of the project.

Post-construction financing will also be provided by Citicorp Real Estate, Inc. for a period of seven additional years.

6. Construction Period:

23 months

7. Development Team:

Developer: Marketplace Center Associates
James F. Sullivan, Boston, Massachusetts

EXHIBIT A

The land in Boston, Suffolk County, Massachusetts, situated at the northeasterly intersection of State Street and Commercial Street shown as Parcel D-10 on a plan entitled "Boston Redevelopment Authority, Downtown Waterfront Faneuil Hall Project, Project No Mass R-77, Boston Suffolk County-Massachusetts Delivery Parcel Plan, Parcel D-10", prepared by R. E. Cameron & Associates, Inc., dated July 6, 1983, to be recorded with Suffolk County Registry of Deeds herewith, and more particularly bounded and described as follows:

- WESTERLY by Commercial Street, 441.28 feet;
- WESTERLY and
NORTHWESTERLY by the intersection of Commercial Street and Expressway Under S.B. by two lines measuring respectively, 10.38 feet and 24.45 feet;
- NORTHWESTERLY
and EASTERLY by Expressway Under S.B. by several lines measuring respectively, 71.09 feet, 21.51 feet, 56.64 feet, 57.96 feet, 82.28 feet, 72.22 feet, 77.88 feet and 62.75 feet; and
- SOUTHERLY by State Street, 232.28 feet.

Containing 75,008 square feet, according to said plan.

Included within the above-described premises is registered land, particularly bounded and described as follows:

1. SOUTHERLY by the northerly line of State Street, 22.43 feet;
- WESTERLY by the easterly line of Commercial Street, 60.41 feet;
- NORTHERLY by the southerly line of former Commerce Street, 18.05 feet; and
- EASTERLY by land formerly of American Board of Commissioners for Foreign Missions, Trustee, 60.25 feet.

All of said boundaries are shown on a plan drawn by Aspinwall & Lincoln, Civil Engineers, dated Jan. 22, 1925, as modified and approved by the Land Court, filed in the Land Registration Office as Plan No. 10619-A.

2. NORTHWESTERLY by the southeasterly line of former South Market Street, 9.82 feet;
- NORTHEASTERLY by Expressway Under by two lines measuring respectively, 70.78 feet and 14.77 feet;
- SOUTHEASTERLY by the northwesterly line of former Commerce Street, 33.23 feet; and
- SOUTHWESTERLY by land of the Boston Redevelopment Authority, 85.83 feet.

All of said boundaries are shown on a plan drawn by R. E. Cameron & Associates, Inc., dated May 17, 1983, as modified and approved by the Land Court, filed in the Land Registration Office as Plan No. 20466-B, being Lot 1 thereon.

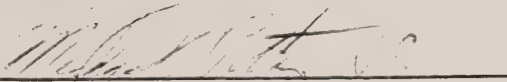
Enclosed please find the Exhibits to Draft No. 6 of the Ground Lease Between Boston Redevelopment Authority And Marketplace Center Limited Partnership (the "Ground Lease") dated July 13, 1983:

1. Exhibit A: Description of Land;
2. Exhibit B: Permitted Exceptions;
3. Exhibit C: Final Working Drawings and Specifications;
4. Exhibit D: Design Review Procedure;
5. Exhibit LP: Tenant's Leasing Program;
6. Exhibit E: Areas of Special Concern;
7. Exhibit E-1: Plan showing facilities serving food or beverages at fixed locations; and
8. Exhibit E-2: Plan showing Exclusive Use Area and Shared Use Area.

the Project and issuance of this commitment letter, including, but not limited to, reasonable attorney's fees.

Very truly yours,

CITICORP REAL ESTATE, INC.

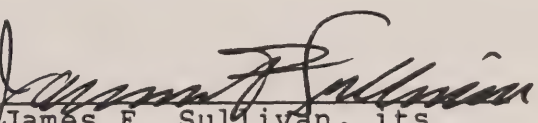
By: 

The above loan commitment is hereby accepted and all of the terms and conditions set forth therein or referred to therein are agreed to and the warranties and representations set forth therein are expressly made and confirmed by each of the undersigned.

Executed under seal this 28th day of July, 1983.

MARKETPLACE CENTER LIMITED
PARTNERSHIP

By: MARKETPLACE CENTER, INC.,
a Massachusetts corporation
and its sole General Partner

By: 

James F. Sullivan, its
President and Treasurer



James F. Sullivan,
individually

20,14-461
7/26/83-cww

EXHIBIT B

PERMITTED EXCEPTIONS

1. Easement in favor of the Commonwealth of Massachusetts for the purpose of maintaining, using and repairing the John F. Fitzgerald Expressway, including the right to maintain and use pillars, columns, footings, retaining walls and underground and ground level installations, recorded with the Suffolk County Registry of Deeds in Book 7546, Page 197.

2. Tenant acknowledges that at the time of delivery of the Leased Premises there will exist in, on or under the Leased Premises certain utility installations which, in certain cases, shall remain as presently located, and in other cases shall be relocated within the Leased Premises during the course of construction of the Improvements, as follows:

- (i) 54 inch drain line and 48 inch sewer line installed by Landlord and maintained by the Boston Water and Sewer Commission which shall continue to be maintained in their present location and accommodated within the design and construction of the Improvements;
- (ii) 24 inch high pressure water line installed by the predecessor of the Boston Water and Sewer Commission, which is to be relocated within the Leased Premises;

(iii) storm drain for run-off from the Fitzgerald Expressway and the Surface Artery, which is to be relocated within the Leased Premises; and

(iv) 16 inch high pressure steam line operated by the Boston Edison Company, Steam Distribution Division, which is to be relocated within the Leases Premises.

It shall be the repsonsibility of the Tenant to coordinate the relocation of the facilities referred to in items (ii), (iii) and (iv) above with the utilities involved and such relocation shall be in accordance with plans and specifications approved by Landlord.

Tenant shall permit the utilities responsible for the facilities referred to in (i), (ii), (iii) and (iv) above, access to the Leased Premises and the Improvements as shall be reasonably necessary for the purposes of operation, maintenance, inspection and repair of the respective facilities.

Each of the rights referred to in (i) through (iv) above shall expire upon abandonment, discontinuance or termination of the respective facilities.

Architect: WZMH Group Inc.
Boston, Massachusetts

Financing Consultant/Leasing/Management:

Meredith & Grew
Boston, Massachusetts

Contractor: Gilbane Building Company
Providence, Rhode Island

Landscape Architect:

William Pressley & Associates
Newton, Massachusetts

Legal Consultants:

Hale & Dorr
Boston, Massachusetts

Retail Consultants:

Halcyon LTD.
Hartford, Connecticut

Museum Consultants:

Joseph A. Wetzel & Associates
Boston, Massachusetts

Geotechnical Engineers:

Haley & Aldrich, Inc.
Cambridge, Massachusetts

Structural Engineer:

Weidlinger Associates
Cambridge, Massachusetts

Mechanical Engineer:

Cosentini Associates
Cambridge, Massachusetts

Site Engineer:

Anderson Nichols Company
Boston, Massachusetts

MARKETPLACE CENTER LIMITED PARTNERSHIP
89 State Street
Boston, MA 02109

and

GENERAL INVESTMENT AND DEVELOPMENT CO.
600 Atlantic Avenue
Boston, MA 02210

July 27, 1983

Mr. Robert J. Ryan, Director
Boston Redevelopment Authority
One City Hall Square
Boston, MA 02201

Re: Marketplace Center
Parcel D-10

Dear Mr. Ryan:

Reference is made to the commitment letter issued by Citicorp Real Estate, Inc. on July 22, 1983 for construction and term financing for the project to be developed on Parcel D-10. James F. Sullivan, doing business as Marketplace Center Associates, the Authority's tentatively designated developer for Parcel D-10, has formed Marketplace Center Limited Partnership as the developer entity. Citicorp's commitment requires that a limited guarantee be provided by an "equity limited partner" and by General Investment and Development Co. ("GID"). The equity limited partner is to be designated by GID. A description of GID has been previously furnished to you.

GID welcomes the opportunity to participate in this important project which will be a significant contributor to the continued growth and vitality of the marketplace area and to the achievement of the goals of the Downtown Waterfront - Faneuil Hall Urban Renewal Plan.

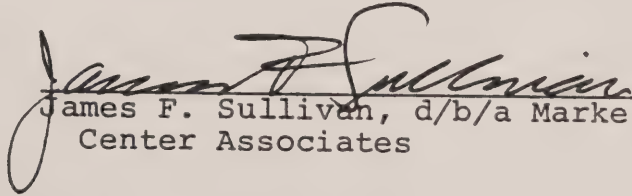
The purpose of this letter is to advise and assure the Boston Redevelopment Authority that GID has agreed to form the equity limited partnership, furnish the limited guarantee and the security all as called for by the Citicorp commitment. Further, Marketplace Center Limited Partnership and GID have agreed upon all material elements of a partnership arrangement whereby

Mr. Robert J. Ryan, Director
Page 2
July 27, 1983

a limited partnership composed of officers or affiliates of GID will be admitted to Marketplace Center Limited Partnership as a 25% limited partner.

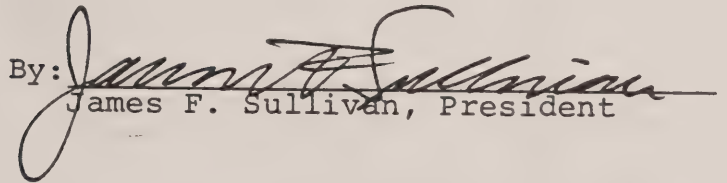
Accordingly, the undersigned respectfully request that the Authority finally designate, as the developer of Parcel D-10, Marketplace Center Limited Partnership of which Marketplace Center, Inc., a corporation wholly owned by James F. Sullivan, will be the general partner and James F. Sullivan individually will be a limited partner, together holding a 75% interest, and the GID limited partnership will hold the remaining 25% interest as a limited partner.

Yours very truly,


James F. Sullivan, d/b/a Marketplace
Center Associates

MARKETPLACE CENTER LIMITED
PARTNERSHIP

By: Marketplace Center, Inc.

By: 
James F. Sullivan, President

GENERAL INVESTMENT AND DEVELOPMENT
CO.

By: 
Title: SENIOR VICE PRESIDENT

A subsidiary of
Citicorp
One Boston Place
8th Floor
Boston, MA
02108
(617) 722-6200

July 22, 1983

Mr. James F. Sullivan and
Marketplace Center Limited Partnership
189 State Street, 8th Floor
Boston, Massachusetts 02109

Re: \$57,000,000.00 Construction-Permanent Loan to Finance
the Development of a 16-Story Building on Parcel D-10
at the Corner of Commercial Street and State Street in
Boston, Massachusetts Consisting of 273,216 Square Feet
of Office Space, 63,920 of Retail Space and a 150-Car
Underground Parking Garage ("Project")

Gentlemen:

This is to advise that Citicorp Real Estate, Inc., a Delaware corporation, which is a wholly owned subsidiary of Citibank, N.A. ("Citibank") and having a place of business at the 8th Floor, One Boston Place, Boston, Massachusetts 02108 ("Lender") has approved the granting of a commercial real estate loan ("Loan") to Marketplace Center Limited Partnership, a Massachusetts limited partnership having a place of business at 189 State Street, 8th Floor, Boston, Massachusetts 02109 ("Borrower") all upon and subject to the terms and conditions hereinafter set forth.

1. Loan Amount; Construction Phase; and Intermediate Term Loan Phase. A loan of \$57,000,000.00 ("Loan") shall be made to fund the development and construction of the Project and operating costs associated with the Project during the construction and rent-up period. The Loan shall have a "Construction Phase" of twenty-four (24) months (plus a reasonable period of time for force majeure) and thereafter, upon the satisfactory completion of the Project, the Loan shall have a seven (7) year "Intermediate Term Loan Phase".

2. Interest Rate and Fees. During the Construction Phase, the Loan shall bear interest at the rate of 1 1/4% per annum over Citibank Alternate Base II and shall require the payment of a fee of one-half (1/2) of one (1%) percent of the Loan [\$285,000.00] upon initial closing. Upon conversion of the Loan to the Intermediate Term Loan Phase, and as a condition thereof, a fee of an additional one-half (1/2) of one (1%) percent of the principal balance of the Loan [\$285,000.00, if the full \$57,000,000.00 is

outstanding] shall be required. During the Intermediate Term Loan Phase interest shall be payable at a fixed rate as described in Section 3. below. In addition, a \$3,000,000.00 "Commitment and Service Fee" shall be payable at or prior to the maturity of the Loan whether in accordance with its terms or upon the earlier sale or refinancing of the Project. The Loan may be prepaid at any time without premium or penalty upon payment in full of all principal, accrued interest and other charges then due plus the \$3,000,000.00 Commitment and Service Fee; provided, however, in no event shall any fees paid be subject to refund or rebate and further provided that following the conversion of the Loan to the Intermediate Term Loan such prepayment shall be allowed without penalty only on the expiration of a fixed interest period.

3. Payments and Terms. During the Construction Phase the Loan shall be payable interest only in arrears commencing one (1) month from the initial closing and on the same day of each month thereafter through and including the 24th monthly anniversary of the initial funding of the Loan (plus any extended period for force majeure); if construction of the Project has been completed as required by the loan documents by the 24th monthly anniversary following the initial funding of the Loan (plus any extended period for force majeure), the Loan, upon such completion, shall be converted to the Intermediate Term Loan Phase (unless Borrower elects to prepay the Loan in full) and shall thereafter be payable over a further period of seven (7) years in accordance with the following:

- (a) Interest payments (at one of the fixed rates described below) shall be due in arrears on each monthly anniversary;
- (b) Principal payments shall be required on the basis of a twenty-five (25) year direct reduction schedule based upon the fixed rate then established on the date of the conversion of the Loan from the Construction Phase to the Intermediate Term Loan Phase; and
- (c) The entire balance of accrued but unpaid interest and principal shall be due in full seven (7) years from the date of conversion to the Intermediate Term Loan Phase.

The Borrower shall have the option to select a fixed interest rate at the time the Loan is converted to the Intermediate Term Loan Phase for either one (1) year or for the full remaining term of the Loan. If the Borrower selects the one (1) year fixed rate, then at the end of such one year the Borrower shall again have the option to select either a one year fixed rate or a fixed rate for the balance of the term. Unless the Borrower selects a fixed rate for the balance of the loan term, the option to so select a one year fixed rate or a fixed rate for the balance of the term shall be repeated each year.

The fixed rate shall be set upon such terms and conditions as shall then be made available generally by Lender or by Citibank under its then current fixed rate lending program. If a one year fixed rate is selected, the interest rate determination shall be calculated at 200 basis points over the Lender's cost of funds for the one (1) year period (such cost of funds to be determined at the inception of the one year period). If a fixed rate until the end of the remaining term of the Loan is selected, the interest rate shall be that which is then being offered for equivalent fixed rate loans for an equivalent period by Lender or by Citibank.

The Loan may be accelerated at the option of the holder in the event of a default continuing uncured beyond the applicable grace periods as will be set forth in the loan documents and also in the event of a sale of the Project or any change in the identity or composition of the Borrower, its general partner, or any of its limited partners.

4. Use of Proceeds. The proceeds of the Loan shall be used solely for the costs incurred in connection with the development and construction of the Project and the operation of the same during the construction and rent-up period in accordance with a budget prepared by the Borrower, subject to Lender's approval, as such budget may be amended from time to time, in each instance subject to the prior approval of the Lender. No proceeds of the loan shall be used for any purpose other than one which is covered by the budget as most recently approved by Lender and which also constitutes an item includable within the definition of "Total Project Cost" as set forth in the "Ground Lease" to be executed between the Borrower and the Boston Redevelopment Authority ("BRA").

5. Commitment and Service Fee Note. The Borrower agrees to evidence its obligation to pay the Commitment and Service Fee in the amount of \$3,000,000.00 by the execution and delivery of a "Commitment and Service Fee Note" in the amount of \$3,000,000.00 which shall be payable without interest, prior to the maturity thereof, concurrently with the maturity of the Loan [whether at its stated maturity, or upon acceleration for default, upon refinancing of the Project, or upon sale of the Project] if not sooner paid at Borrower's election. If the Commitment and Service Fee Note is not paid when due, it shall thereafter bear interest at the rate of Alternate Base II plus 3 1/4% per annum. The Commitment and Service Fee Note shall be secured by the Mortgage and Security Agreement, Conditional Assignment of Leases and Rents and other collateral referred to in Section 6. below, but shall not be secured by: (i) the personal guaranty of James F. Sullivan; or (ii) the "Limited Guaranty" (as defined in Section 6.D.)

6. Collateral. The Loan and [except as otherwise expressly provided] the Commitment and Service Fee Note together with interest thereon and all other charges provided therein and also

all other obligations of the Borrower to the Lender now existing or hereafter arising, direct or indirect, absolute or contingent shall be secured by the following "Collateral":

- A. A first lien Real Estate Mortgage and Security Agreement on the leasehold estate of the Borrower under and pursuant to the Ground Lease to be executed from the BRA and the Improvements and Building Service Equipment to be constructed and completed thereon and all other assets of the Borrower whether now existing or hereafter acquired.
- B. A Collateral Assignment of Leases and Rents from the Borrower with respect to all income and profits to be derived from the space leases within the Project. Inasmuch as Borrower will be the holder of the ground lessee's interest under an 80-year Ground Lease from the BRA, all such space leases shall be sub-leases.
- C. The unconditional Guaranty of Completion of the Project and Payment of the Loan by James F. Sullivan, individually [except that this Guaranty shall not apply to the Commitment and Service Fee Note] ("Sullivan Guaranty"). The Sullivan Guaranty shall be secured by a first lien pledge and assignment of all of Sullivan's partnership interests in the Dock Square Garage Project whether owned directly or through controlled corporations or other entities. All cash distributions to Sullivan or his controlled corporations or entities [excluding the presently stated management fee] shall be paid to Lender and held as cash collateral as continuing security for the Loan; such cash collateral shall be held in interest bearing form with the interest to be added to the cash collateral account. However, the cash collateral account, prior to default, may be drawn against by Sullivan to pay reasonable costs and expenses incurred with respect to the Project or with respect to the Dock Square Garage Project.
- D. A \$7,000,000.00 limited guaranty ("Limited Guaranty") to be provided by the "Equity Limited Partner" (as hereinafter described) and by General Investment and Development Co. under and pursuant to which the guarantors shall agree to provide up to \$7,000,000.00 to cover all cost overruns in connection with the completion of the Project together with any and all operating deficits whether during the Construction Phase or thereafter. The Lender shall have the right to call upon the Limited Guaranty at any time when the undisbursed portion of the \$57,000,000.00 Loan is not sufficient in Lender's reasonable and objective judgment to finance completion of the Project and support operating deficiencies or if any line item in the most recently approved budget is exceeded by 25% or more. The Limited Guaranty shall be

secured by a first lien Pledge and Assignment of unrestricted and freely tradable shares of a publicly traded corporation acceptable to Lender, or such other collateral as the Lender may approve of; there shall be a right to substitute collateral subject to Lender's prior approval in each instance. The Equity Limited Partner shall be a limited partnership designated by General Investment and Development Co. subject to the provisions of Section 7.D. below.

- E. Agreements of Subordination from each Partner, General and Limited, of the Borrower under and pursuant to which no partnership assets shall be distributed to or paid to any partner whether for services rendered, or as a distribution of available cash, or otherwise, so long as the Loan remains outstanding save and except:
- (i) the reimbursement to James F. Sullivan and related entities of bona fide development costs actually paid to third parties prior to the closing of the Loan;
 - (ii) the payment of a Developer's Fee of up to \$1,680,000.00 to James F. Sullivan not sooner than the conversion of the Loan from the Construction Phase to the Intermediate Term Loan Phase and the achievement of such rental status as shall demonstrate to the reasonable satisfaction of the Lender that the Project is then operating on a break-even or better basis ("Break-Even Status") and subject to the further requirement that such amount, less only that portion thereof which is actually used by James F. Sullivan to pay income tax liabilities associated therewith, shall be deposited in interest-bearing Certificates of Deposits to be pledged to Lender as continuing cash collateral for the Loan [provided, however, that payments on account of the Developer's Fee may be made to James F. Sullivan prior to achievement of Break-Even Status and without the obligation to pledge the proceeds to Lender to defray the actual and reasonable costs of administration and office operations in connection with the Project]; and
 - (iii) distributions to the Limited Partners after conversion from the Construction Phase to the Intermediate Term Loan Phase and achievement of Break-Even Status, subject in each instance to the prior approval of the Lender; provided, however, once the Loan has been converted to the Intermediate Term Loan Phase and Break-Even status is achieved, available cash may be

distributed to the Limited Guarantor to repay any advances made under the Limited Guaranty and available cash may be distributed to any of the Partners so long as reasonable reserves are maintained and so long as it is demonstrated to the reasonable satisfaction of Lender that the Borrower is current on all obligations, has adequate reserves, and has projected income from space leases which are in effect on a rent paying basis sufficient to meet the current projected expenses of the Borrower.

- F. An assignment of the General Contract, assented to by the General Contractor and providing that the Lender shall have the right in the event of the exercise by Lender of its rights under the Loan Documents to complete the Project to use the services of such General Contractor under the General Contract subject only to the payment of sums which become due under such General Contract after the exercise by the Lender of its rights.
- G. A collateral assignment of Architect's Contract assented to by the Architect, and providing that the Lender shall have the right in the event of the exercise by Lender of its rights under the Loan Documents to complete the Project to use the plans and specifications (without further payment) and to use the Architect's services (upon payment of the sums required under the Contract).
- H. First lien pledges of all the shares of the corporate general partner of the Borrower and first lien pledges of all the limited partnership interests in the Borrower.
- I. Notwithstanding the foregoing, following conversion of the Loan to the Intermediate Term Loan Phase, once Break-Even status is achieved and maintained for six (6) months, and no fact or circumstance exists which constitutes (or which with the mere passage of time or giving of notice, or both, would constitute) an event of default under the loan documents, the cash collateral account in respect of Sullivan shall be released to Sullivan upon written request and the collateral (or so much thereof as remains) for the Limited Guaranty shall be released to the pledgor thereof upon request.

7. Conditions to Initial Funding and Closing of the Loan. It shall be a condition precedent of the obligations to close the Loan and make the initial funding thereunder that each of the following conditions precedent be satisfied in full unless specifically waived in writing by the Lender at or prior to the time of initial funding:

- A. The BRA shall have granted a final designation of the Borrower as the developer of the Project and shall have entered into a Ground Lease with the Borrower in the draft form previously delivered to the Lender [subject to the qualifications hereinafter referenced]; in addition, the BRA shall have issued such estoppel certificates and other assurances of compliance as Lender may reasonably require in order to satisfactorily evidence to the Lender that the Borrower is in compliance with the Ground Lease, such conditions of the Lease Commencement Agreement dated February 15, 1983 between the BRA and the Borrower's predecessor as may still be in full force and effect, and that the BRA has given its approval to all those matters which under and pursuant to the terms of the Ground Lease and the Lease Commencement Agreement require the approval of the BRA. The Ground Lease proposed between the BRA and the Borrower as previously submitted to the Lender has been approved subject to the qualification that certain issues and concerns as outlined in a separate letter be resolved to the reasonable satisfaction of the Lender, the Borrower and the BRA.
- B. The Lender shall have received and independently approved of each of the following: (i) all items which require the approval of the BRA under the Ground Lease or under the Lease Commencement Agreement, including but not limited to, plans and specifications, agreement with development consultant, agreement with architect, agreement with general contractor, agreement with museum consultant, satisfactory bonding or assurances in lieu thereof, and building permit; (ii) a total budget for the Project including both the hard costs of construction and the so-called indirect costs associated therewith including a reasonable estimate for operating deficiencies pending the full rent-up of the Project; and (iii) a report of Lender's independent construction representative or other qualified professionals to the effect that the plans and specifications are complete, the construction contract covers all work and material required to complete the work contemplated by the plans and specifications, the guaranteed maximum price set forth in the construction contract is reasonable, and that the total budget is reasonable.
- C. All space leases (sub-leases) shall require in each instance the prior written approval of the Lender as to the form, content and manner of execution of the space lease and as to the credit worthiness of the space tenant and each guarantor of the space tenant's obligations.

- D. An Equity Limited Partner designated by General Investment and Development Co., or other entity acceptable to Lender, shall have been admitted to Marketplace Center Limited Partnership upon terms and conditions to be established solely among the partners (but subject to the reasonable approval of the Lender only insofar as the Lender's interests are concerned) and such Equity Limited Partner and General Investment and Development Co., or other entity acceptable to Lender, shall have executed the Limited Guaranty and the given collateral to Lender as set forth in Section 6.D above.
- E. All real estate taxes, personal property taxes and other municipal charges relating to the collateral shall be current.
- F. All real and personal property constituting or intending to constitute collateral for the Loan (to the extent of its present construction or existence) shall comply with all applicable Federal, state and local laws, by-laws, codes and regulations including but not limited to, those applicable to zoning, subdivision, building, health, safety and sanitary codes, environmental matters and other governmental requirements pertaining to such property and the proposed development and operation thereof and there shall be no such law, by-law, code, regulation or other governmental order which shall prohibit or adversely limit the use of such Collateral for the purposes the same are intended for nor shall there be outstanding any uncured violation of any such law, by-law, code, regulation or requirements, and all variances, permits, special permits, building permits, licenses and other governmental authorizations or approvals of every nature whatsoever, if any, which shall be reasonably necessary in order to permit the full construction of the Project shall have been duly and finally received with all appeal periods therefrom having elapsed and with no appeal having been taken therefrom.
- G. The Lender shall have received a current on-site survey of the real property intending to constitute collateral for the Loan containing a certification thereof of a Registered Land Surveyor and containing such details as the Lender may reasonably require. Without limitation said survey shall evidence: (i) no encroachment on or from the Property; (ii) the availability and location of adequate and unencumbered utility connections for power, storm drainage, sanitary waste disposal and drinking

water; (iii) compliance with subdivision and zoning law; and (iv) that the property is not located in whole or in part in a flood hazard district flood plane or conservation district.

- H. The Lender shall have received a mortgagee's title insurance policy in an amount of \$60,000,000.00 [that is, the Loan of \$57,000,000.00 plus the \$3,000,000.00 Commitment and Service Fee Note] (subject to a pending disbursement provision) such policy to have been issued by a well recognized national title insurance company reasonably satisfactory to the Lender insuring the real estate mortgage on the leasehold estate without exception other than those which are set forth herein or which may be approved hereafter by Lender in its sole discretion prior to the initial closing.
- I. The Lender shall have received legal opinion letters from Messrs. Hale and Dorr (as counsel to the Borrower and James F. Sullivan) and from Messrs. Ropes and Gray (as counsel to the Limited Guarantor), each as applicable, to the effect that each of the loan documents has been duly executed and is binding upon the Borrower and the Guarantors (as the case may be) and is enforceable with respect to the collateral all in accordance with the terms of the loan documents subject to bankruptcy and other laws of general application affecting the rights and remedies of creditors generally and that the property which is intended to be collateral as it presently exists complies with all legal requirements including without limitation all zoning, building, environmental laws, codes and regulations and the proposed construction and development of the Project thereon as contemplated by this Commitment Letter will not violate any such laws, codes, rules or regulations. Such opinion shall also set forth what permits, licenses, and governmental authorizations are required in order to comply with legal requirements applicable to the construction and development of the Project. The Lender shall have also received from qualified attorneys, engineers, surveyors and architects such other certificates, opinions, surveys and other evidence of compliance with each of the conditions herein set forth as the Lender may reasonably require.
- J. The Lender shall be named as leasehold mortgagee/secured party on policies of insurance as presently set forth or referred to in the Ground Lease [draft submitted] and in addition there shall be a requirement of rent loss insurance equal to one (1) year's rent from all space leases [present estimate would be \$12,000,000.00 of rent loss insurance]; an actual insurance policy or certified copy

thereof, but not merely a binder or certificate of insurance, shall be delivered at the initial closing and such insurance policy shall contain a standard New England mortgagee/secured party endorsement with there being no other mortgagees, other secured parties named thereon [but which shall name the BRA as an insured as contemplated by the Ground Lease] and expressly providing that no act or omission of the named insured shall constitute a defense to the insurer vis a vis the interest of the Lender as leasehold mortgagee/secured party and further incorporating the specific provisions of the Ground Lease in respect of the manner of adjustment of losses, and the payment of proceeds, other than rent loss proceeds, to the Depository (as that term is defined in the Ground Lease).

- K. No material and adverse change shall have occurred in the financial condition of James F. Sullivan since the date of the most recent financial statement received by Lender prior to the date of this Commitment Letter.
- L. Lender shall have received executed counterparts of multiple obligee Payment and Performance Bonds from all sub-contractors engaged in the Project and such other payment and performance and/or lien bonds or other forms of satisfaction from the General Contractor as the Lender may reasonably require.
- M. All warranties and representations made by or on behalf of James F. Sullivan or the Borrower, or either of them, to the Lender shall be true, accurate and complete.
- N. The form, content and manner of execution of each of the loan documents shall be reasonably satisfactory to Lender and its counsel and shall not be inconsistent with the business terms of this commitment letter. The Loan Documents shall include, without limitation, a covenant by James F. Sullivan that he shall not transfer any of his assets for less than full and fair present consideration nor shall he suffer any material and adverse change in his financial condition, a covenant that the fair market value of the collateral for the Limited Guaranty shall always be equal to or greater than the amount payable thereunder, and such further affirmative and negative covenants as Lender may reasonably require.

8. Warranties and Representations. James F. Sullivan and the Borrower each warrant and represent to the Lender for the express purpose of inducing the Lender to issue this commitment letter and to make and fund the Loan and to otherwise complete all of the transactions contemplated hereby as follows:

- A. True and complete financial statements of James F. Sullivan have been delivered to the Lender and same fairly presents his financial condition as of the date thereof and no material and adverse change has occurred in his financial condition since the date thereof.
- B. The consummation of the Loan and the subsequent payment and performance of the obligations evidenced and secured by the Loan Documents will not constitute a violation of any law, order, regulation, contract, or agreement to which James F. Sullivan, the Borrower, or either of them, is a party or by which any one or more of them may be bound.
- C. True and complete copies of all plans and specifications, all agreements with the BRA including the Lease Commencement Agreement and the Ground Lease in its most recently drafted form, the general contract, the architect's contract and all other agreements contemplated by the Lease Commencement and/or the Ground Lease have been delivered to the Lender and the same are unmodified and, if previously executed, are in full force and effect.
- D. There is no material litigation now pending or threatened against James F. Sullivan, the Borrower, or either of them which if adversely decided would materially impair the ability of any one or more of such parties to pay and perform their respective obligations hereunder or under the loan documents.

9. No Assignment. This loan commitment may not be assigned by the Borrower and/or by James F. Sullivan and any purported assignment hereof shall render this loan commitment at the option of the Lender null and void.

10. Acceptance and Effectiveness; Payment of Expenses. In order to become effective, this loan commitment must be accepted in writing by the Borrower and by James F. Sullivan by signing three (3) copies hereof and returning the same to the Lender not later than July 28, 1983. This loan commitment shall expire and the Lender shall have no further obligation hereunder unless the initial closing of the Loan is made in accordance herewith on or before August 18, 1983. Whether or not the Loan closes the Borrower and James F. Sullivan agree to pay the reasonable out-of-pocket costs of Lender in connection with Lender's evaluation of

EXHIBIT C

1. Phase I Cover Sheet
2. Phase I Table of Contents
3. Phase I List of Drawings
4. Phase I Addendum No. 1 Cover Sheet
5. Phase I Addendum No. 2 Cover Sheet
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MARKETPLACE CENTER

BOSTON, MASSACHUSETTS

BID DOCUMENTS AND PROJECT MANUAL

PHASE 1

SITE PREPARATION AND FOUNDATION

OWNER

MARKETPLACE CENTER ASSOCIATES

189 STATE STREET

BOSTON, MASSACHUSETTS 02109

ARCHITECT

WZMH GROUP INC.

SEARS CRESCENT BUILDING

CITY HALL PLAZA

BOSTON, MASSACHUSETTS 02108.

PROJECT 1786 SPF

MAY 18, 1983

BID DOCUMENTS AND PROJECT MANUAL
FOR
MARKETPLACE CENTER
BOSTON, MASSACHUSETTS
PHASE 1 - SITE PREPARATION AND FOUNDATION

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* For determining site preparation and foundation work only.

MARKETPLACE CENTER

BOSTON, MASSACHUSETTS

BID DOCUMENTS AND PROJECT MANUAL

PHASE 1 - ADDENDUM No. 1 SITE PREPARATION AND FOUNDATION

OWNER

MARKETPLACE CENTER ASSOCIATES

189 STATE STREET

BOSTON, MASSACHUSETTS 02109

ARCHITECT

WZMH GROUP INC.

SEARS CRESCENT BUILDING

CITY HALL PLAZA

BOSTON, MASSACHUSETTS 02108.

PROJECT 1786 SPF

JUNE 6, 1983

MARKETPLACE CENTER

BOSTON, MASSACHUSETTS

BID DOCUMENTS AND PROJECT MANUAL

PHASE 1 - ADDENDUM No. 2 SITE PREPARATION AND FOUNDATION

OWNER

MARKETPLACE CENTER ASSOCIATES

189 STATE STREET

BOSTON, MASSACHUSETTS 02109

ARCHITECT

WZMH GROUP INC.

SEARS CRESCENT BUILDING

CITY HALL PLAZA

BOSTON, MASSACHUSETTS 02108.

PROJECT 1786 SPF

JUNE 15, 1983

MARKETPLACE CENTER

BOSTON, MASSACHUSETTS

BID DOCUMENTS AND PROJECT MANUAL PHASE 2

ARCHITECTURAL AND STRUCTURAL

OWNER

MARKETPLACE CENTER ASSOCIATES

189 STATE STREET

BOSTON, MASSACHUSETTS 02109

ARCHITECT

WZMH GROUP INC.

SEARS CRESCENT BUILDING

CITY HALL PLAZA

BOSTON, MASSACHUSETTS 02108.

PROJECT 1786
JUNE 27, 1983

MARKETPLACE CENTER

BOSTON, MASSACHUSETTS

BID DOCUMENTS AND PROJECT MANUAL

PHASE 2

MECHANICAL, ELECTRICAL, PLUMBING AND FIRE PROTECTION

OWNER

MARKETPLACE CENTER ASSOCIATES

189 STATE STREET

BOSTON, MASSACHUSETTS 02109

ARCHITECT

WZMH GROUP INC.

SEARS CRESCENT BUILDING

CITY HALL PLAZA

BOSTON, MASSACHUSETTS 02108

PROJECT 1786
JUNE 27, 1983

BID DOCUMENTS AND PROJECT MANUAL
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BOSTON, MASSACHUSETTS
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07900	JOINT SEALANTS	7
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09265	GLASS FIBER REINFORCED SYSTEMS	4
09300	TILE	7
09510	ACOUSTICAL CEILING SYSTEMS	7
09600	GRANITE AND BRICK PAVERS	10
09650	RESILIENT FLOORING	4
09800	SPECIAL COATINGS	8
09900	PAINTING	8
09950	WALL COVERING	4

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10210	ARCHITECTURAL LOUVERS	3
10350	FLAGPOLES AND BANNER POLES	2
10400	IDENTIFYING DEVICES	2
10500	LOCKERS	3
10520	FIRE EXTINGUISHERS AND CABINETS	2
10601	MESH PARTITIONS	2
10800	WASHROOM ACCESSORIES	5

DIVISION 11 - EQUIPMENT

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DIVISION 13 - SPECIAL CONSTRUCTION

NOT USED

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<u>DIVISION 14 - CONVEYING SYSTEMS</u>		
14215	ELECTRIC TRACTION ELEVATORS	26
14225	HYDRAULIC ELEVATORS	19

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16300	ELECTRICAL	111
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<u>Section</u>	<u>Title</u>	<u>Pages</u>
02200	EARTHWORK	7
02410	DRAINAGE SYSTEMS	13
02500	PAVEMENTS	8
02700	STEEL WATER PIPE	10
02713	EXTERIOR WATER SUPPLY SYSTEM	23
02722	SANITARY SEWER SYSTEM	20
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15050	STEAM LINES	14
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END OF TABLE OF CONTENTS

EXHIBIT E

AREAS OF SPECIAL CONCERN

Walkway to the Sea and Excedra Area

Tenant shall construct, as part of the Initial Improvements, and maintain within the Leased Premises throughout the term of this Lease, the semi-circular excedra area and the walkway extended therefrom in a generally easterly direction to the Surface Artery (collectively referred to as the "Walkway to the Sea") all as shown on and described in the Final Working Drawings and Specifications identified in Exhibit C to this Lease. The Walkway to the Sea shall be maintained principally as a pedestrian passageway. Restaurants, cafes and other like facilities serving food and/or beverages at fixed locations (as distinct from mobile food and beverage facilities such as food carts and ice cream vendors) shall be permitted but only within the areas outlined in red on Exhibit E-1 hereto and only "sit-down table service" shall be provided at such facilities. Other commercial uses within the Walkway to the Sea will be permitted, subject to the approval of the Boston Redevelopment Authority.

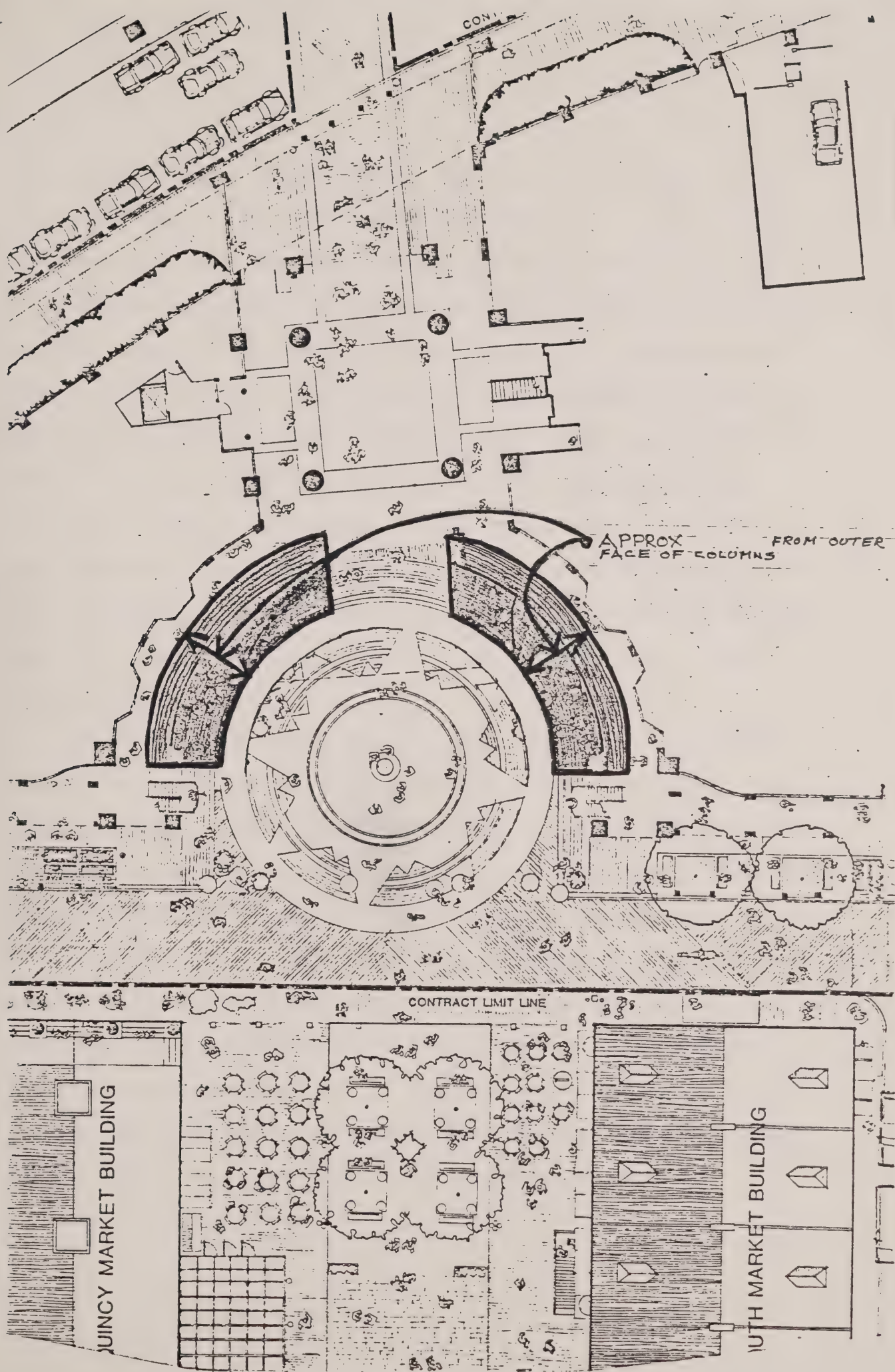
Museum

The Tenant shall make available space on the second floor of the southerly building, identified on Exhibit LP to this

Lease as "Museum" and "Museum Shop" (collectively the "Museum Space") for occupancy by an organization formed to operate a museum at that location. It is contemplated that the Museum organization shall be a charitable or "not for profit" institution and that the Museum shall emphasize the history and culture of Boston. Tenant has retained a museum consultant to help form the organization and plan the Museum Space. Tenant shall lease the Museum Space to the organization so formed at a market rental rate and otherwise upon market terms. If the museum organization shall discontinue its operation in the Museum Space or if its lease shall expire or be terminated, Landlord shall thereafter be free to lease the Museum Space for any use permitted under Section 5.2 of this Lease subject to the provisions of Section 20.1 respecting Landlord's approval of Leasing Programs.

Trash Compactor

Tenant shall construct as part of the Initial Improvements the areas marked "Area for Exclusive Use of Rouse Company" (the "Exclusive Use Area") and as "Area to be Shared by Marketplace Center and Rouse Company" (the "Shared Use Area") as shown on Exhibit E-2 hereto, all in accordance with the Final Drawings and Specifications listed in Exhibit C to the Lease. Tenant shall lease to Faneuil Hall Marketplace Associates ("FHMA") as the operator of the Faneuil Hall Marketplace which adjoins the Leased Premises, and its successors and assigns



as such operator, the Exclusive Use Area for its use on an exclusive basis, and the Shared Use Area for its use on a shared basis with Tenant. FHMA's use of the Exclusive Use Area shall be limited to storage and maintenance of equipment used by it in connection with the Faneuil Hall Marketplace, and the use by FHMA of the Shared Use Area shall be limited to the operation of trash compactors or other trash collection facilities and access thereto for loading and unloading of such facilities. The Lease to FHMA shall not include the furnishing of any trash collection service or equipment, but it is contemplated that Tenant and FHMA will together arrange for such service and facilities to be provided by an outside contractor.

Rent required to be paid by FHMA for the Exclusive Use and Shared Use Areas shall not exceed \$2,000 per month plus a share of the operating expenses and taxes for the Property as shall be mutually acceptable to Tenant and FHMA. FHMA shall also be required to pay for any alteration or addition to the Exclusive Use and Shared Use Areas which may be required by law or regulation of any governmental authority because of the operation of trash collection facilities in the Shared Use Area or the uses permitted in the Exclusive Use Area. The term of the Lease to FHMA shall cease upon discontinuance by FHMA of the Shared Use Area for trash collection purposes.



BOSTON

CITY HALL

NEW ENGLAND
MERCHANTS
BANK

WASHINGTON ST

ST.

STATE ST

STATE ST

STATE ST

MERCHANTS ROW

CHATHAM ST

CHATHAM ROW

STREET

COMMERCIAL STREET

FANEUIL MALL

QUINCY

MARKET

CLINTON ST

PARKING

UNION ST

HANOVER ST.

STREET

PARKING

BLACKSTONE

ST.

SUMNER TUNNEL

NORTH

CALLAHAN TUNNEL

PARKING

PULTON

SSOND

COMMERCIAL STREET

ST

PARCEL
D-10

EXPRESSWAY

WATERFRONT
PARK

AVENUE

ATLANTIC

PARKING

900000

1000000

1100000

1200000

1300000

1400000

1500000

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2400000

LIST OF DRAWINGS

<u>Number</u>	<u>Title</u>	<u>Scale</u>
100	GENERAL	
101	Title Sheet	Not to Scale
102	List of Drawings, Abbreviations and Symbols	Not to Scale
200	SITE DEVELOPMENT	
201	Topographic Survey Plan	1" = 20'-0"/As Noted
202	Grid Site Plan	1" = 20'-0"
203	Building Location Plan	1/16" = 1'-0"
204	Site Boring Location Plan	1" = 20'-0"
	CIVIL DRAWINGS - SEPARATE CONTRACT	
211	Topographic Survey and Utility Relocation Plan	1" = 20'-0"
212	Water, Sewer and Drain Line Profiles	As Noted
213	Miscellaneous Details	Not to Scale
214	Water and Drain Details	As Noted
215	Sewer and Drain Details	As Noted
216	Steam Relocation and Details	As Noted
217	Structural Cross Sections	Not to Scale
300	STRUCTURAL	
301	General Notes and Typical Details	Not to Scale
302	Foundation Plan North	1/8" = 1'-0"
303	Foundation Plan South	1/8" = 1'-0"
304	Framing Plan First Floor	1/8" = 1'-0"
305	Framing Plan First Floor South	1/8" = 1'-0"
306	Framing Plan Level 2 North	1/8" = 1'-0"
307	Framing Plan Level 2 South	1/8" = 1'-0"
308	Framing Plan Level 3 North	1/8" = 1'-0"
309	Framing Plan Level 3 South	1/8" = 1'-0"
310	Framing Plan Level 4 North	1/8" = 1'-0"
311	Framing Plan Level 4 South	1/8" = 1'-0"
312	Framing Plans Level 5 to Level 4	1/8" = 1'-0"
313	Framing Plans Level 15 and Level 16	1/8" = 1'-0"
314	Roof Framing Plan and Details	1/8" = 1'-0"/As Noted
315	Part Framing Plans and Details	1/8" = 1'-0"/As Noted
316	Concrete Sections	1/2" = 1'-0"
317	Concrete Sections	3/8" = 1'-0"
318	Concrete Beam Schedules and Pier Details	Not to Scale
319	Pile Cap Plans and Details	3/8"
320	Braced Bay, Moment Frame Elevations and Details	Not to Scale

LIST OF DRAWINGS (Continued)

<u>Number</u>	<u>Title</u>	<u>Scale</u>
321	Typical Steel Details	Not to Scale
322	Column Schedule Sheet 1	Not to Scale
323	Column Schedule Sheet 2 and Truss Elevations	Not to Scale
324	Steel Sections and Details	1/4" = 1'-0"
325	Steel Details, Exedra Beams and Girder Details	Not to Scale
326	Steel Sections	Not to Scale
327	Truss Details	3/4" = 1'-0"
400	ARCHITECTURAL PLANS	
401	Parking Level Plan North	1/8" = 1'-0"
402	Parking Level Plan South	1/8" = 1'-0"
403	1st Floor Plan North	1/8" = 1'-0"
404	1st Floor Plan South	1/8" = 1'-0"
405	2nd Floor Plan North	1/8" = 1'-0"
406	2nd Floor Plan South	1/8" = 1'-0"
407	3rd Floor Plan North	1/8" = 1'-0"
408	3rd Floor Plan South	1/8" = 1'-0"
409	4th Floor Plan	1/8" = 1'-0"
410	5th Floor Plan	1/8" = 1'-0"
411	6th Floor Plan and 7th-11th Floor Plan	1/8" = 1'-0"
412	12th-13th Floor Plan and 14th Floor Plan	1/8" = 1'-0"
413	15th Floor Plan and 16th Floor Plan	1/8" = 1'-0"
414	Elevator Machine Room	1/8" = 1'-0"
415	Roof Plan North	1/8" = 1'-0"
416	Roof Plan South	1/8" = 1'-0"
421	Reflected Ceiling Plan - Parking Level North	1/8" = 1'-0"
422	Reflected Ceiling Plan - Parking Level South	1/8" = 1'-0"
423	Reflected Ceiling Plan - 1st Floor North	1/8" = 1'-0"
424	Reflected Ceiling Plan - 1st Floor South	1/8" = 1'-0"
425	Reflected Ceiling Plan - 2nd Floor North	1/8" = 1'-0"
426	Reflected Ceiling Plan - 2nd Floor South	1/8" = 1'-0"
427	Reflected Ceiling Plan - 3rd Floor North	1/8" = 1'-0"
428	Reflected Ceiling Plan - 3rd Floor South	1/8" = 1'-0"
429	Reflected Ceiling Plan - 4th Floor	1/8" = 1'-0"
430	Reflected Ceiling Plan - 5th Floor	1/8" = 1'-0"
431	Reflected Ceiling Plan - 6th thru 11th Floor	1/8" = 1'-0"
432	Reflected Ceiling Plan - 12th, 13th and 14th Floors	1/8" = 1'-0"
433	Reflected Ceiling Plan - 15th and 16th Floors	1/8" = 1'-0"

LIST OF DRAWINGS (Continued)

<u>Number</u>	<u>Title</u>	<u>Scale</u>
441	Ceiling Details	3" = 1'-0"/As Noted
442	Ceiling Details	3" = 1'-0"
443	Ceiling Details	3" = 1'-0"
500	ARCHITECTURAL EXTERIOR SYSTEMS	
501	North Elevation, Tower	1/16" = 1'-0"
502	South Elevation, Tower	1/16" = 1'-0"
503	East Elevation, Tower	1/16" = 1'-0"
504	West Elevation, Tower	1/16" = 1'-0"
505	State Street (South) Elevation, Low Rise	1/16" = 1'-0"
506	Artery (East) Elevation, Low Rise	1/16" = 1'-0"
507	Commercial Street (West) Elevation, Low Rise	1/16" = 1'-0"
508	Walk-to-the-Sea and Exedra Elevations, Low Rise	1/16" = 1'-0"
509	Building Sections	1/16" = 1'-0"
511	Curtainwall Elevations, Plans and Sections	1/4" = 1'-0"
512	Curtainwall Elevations, Plans and Sections	1/4" = 1'-0"
513	Curtainwall Elevations, Plans and Sections	1/4" = 1'-0"
514	Curtainwall Elevations, Plans and Sections	1/4" = 1'-0"
515	Curtainwall Elevations, Plans and Sections	1/4" = 1'-0"
516	Curtainwall Elevations, Plans and Sections	1/4" = 1'-0"
517	Gable Roof - Elevation and Plan	1/4" = 1'-0"
518	Gable Roof Sections	1/4" = 1'-0"
531	Commercial Street Plans, Elevations and Sections	
532	Commercial Street and Exedra Stair Plans, Elevations and Sections	1/4" = 1'-0"
533	State Street Retail, Plans, Elevations and Sections	
534	State Street (South) Low Rise @ Tower, Plans, Elevations and Sections	1/4" = 1'-0"
535	Artery (East) Low Rise, Plans, Elevations and Sections	1/4" = 1'-0"
536	Artery (East) Low Rise, Plans, Elevations and Sections	1/4" = 1'-0"
537	Walk-to-the-Sea Plans, Elevations and Sections	1/4" = 1'-0"
538	Walk-to-the-Sea Plans, Elevations and Sections	1/4" = 1'-0"
539	Exedra Plans, Elevations and Sections	1/4" = 1'-0"

LIST OF DRAWINGS (Continued)

<u>Number</u>	<u>Title</u>	<u>Scale</u>
541	Tower Details	3" = 1'-0"
542	Tower Details	3" = 1'-0"/As Noted
543	Tower Details	3" = 1'-0"
544	Tower Details	3" = 1'-0"
545	Not Used	
546	Tower Details	3" = 1'-0"
547	Tower Details	3" = 1'-0"
548	Tower Details	3" = 1'-0"
549	Tower Details	3" = 1'-0"
551	Low Rise Details - Commercial Street/Exedra	3" = 1'-0"
552	Low Rise Details - Commercial Street/Exedra	3" = 1'-0"
553	Low Rise Details - State Street	3" = 1'-0"
554	Low Rise Details - State Street	3" = 1'-0"
555	Low Rise Details - Artery (East)	3" = 1'-0"
556	Low Rise Details - Artery (East)	3" = 1'-0"
561	Tower Plan Details	3" = 1'-0"
562	Tower Plan Details	3" = 1'-0"
563	Not Used	
564	Not Used	
565	Not Used	
566	Tower Plan Details	3" = 1'-0"
567	Tower Plan Details	3" = 1'-0"
571	Low Rise Plan Details	3" = 1'-0"
572	Not Used	
581	Sloped Glazing Elevations, Plans and Sections - Office Atrium	1/4" = 1'-0"
582	Sloped Glazing Elevations, Plans and Sections - Walk To The Sea	1/4" = 1'-0"
583	Sloped Glazing Elevations, Plans and Sections - Apse Canopy	1/4" = 1'-0"
584	Sloped Glazing, Miscellaneous Elevations and Sections	3/4" = 1'-0"
591	Roof Details	As Noted

LIST OF DRAWINGS (Continued)

<u>Number</u>	<u>Title</u>	<u>Scale</u>
600	ARCHITECTURAL INTERIOR SYSTEMS	
601	Tower Core Plan - Parking Level and 1st Floor	1/4" = 1'-0"
602	Tower Core Plan - 2nd Floor and 3rd Floor	1/4" = 1'-0"
603	Tower Core Plan - 4th Floor thru 9th Floor, 10th thru 16th Floor	1/4" = 1'-0"
604	Tower Core Plan - 16th Floor and Elevator Machine Room	1/4" = 1'-0"
605	Core Plans and Section - Elevator 8 North	1/4" = 1'-0"
611	Parking Level Sections	1/4" = 1'-0"
612	Parking and Service Area Sections	1/4" = 1'-0"
613	Tower Core Section - Lower Floors and Elevator 10	1/4" = 1'-0"
614	Tower Core Section - Upper Floors	1/4" = 1'-0"
615	Miscellaneous 1/4" Sections	1/4" = 1'-0"
621	Tower Stair No. 1, 1A, 2, 2A - Plans and Sections	1/4" = 1'-0"
622	Low Rise Stairs No. 3, 3A, 3B, 4, 6, 7, 9 and 13	1/4" = 1'-0"
623	Low Rise Stairs No. 8, 10, 11 and 11A	1/4" = 1'-0"
624	Stair Details	1/4" = 1'-0"
625	Retail Grand Stair	1/4" = 1'-0"
631	Elevator Cabs, Plans, Elevations and Details	As Noted
632	Not Used	
633	Elevator Details	3" = 1'-0"
641	Interior Elevations (Cores)	1/8" = 1'-0"
642	Interior Elevations (Toilets)	1/4" = 1'-0"
643	Interior Elevations (Toilets)	1/4" = 1'-0"
644	Entrance Lobby, Plans and Elevations	1/4" = 1'-0"
651	Parking Level Details	As Noted
661	Not Used	
662	Door and Frame Details	3" = 1'-0"
671	Not Used	
672	Partition Types and Details	1-1/2" = 1'-0"

LIST OF DRAWINGS (Continued)

<u>Number</u>	<u>Title</u>	<u>Scale</u>
700	PLUMBING AND FIRE PROTECTION	
701	Parking Level Plan North	1/8" = 1'-0"/As Noted
702	Parking Level Plan South	1/8" = 1'-0"/As Noted
703	First Floor Plan North	1/8" = 1'-0"
704	First Floor Plan South	1/8" = 1'-0"
705	Second Floor Plan North	1/8" = 1'-0"
706	Second Floor Plan South	1/8" = 1'-0"
707	Third Floor Plan North	1/8" = 1'-0"
708	Third Floor Plan South	1/8" = 1'-0"
709	Roof Plan North	1/8" = 1'-0"
710	Fourth Floor Plan	1/8" = 1'-0"
711	Fifth Floor Plan	1/8" = 1'-0"
712	Sixth thru 11th and 12th Floor Plan	1/8" = 1'-0"
713	13th and 14th Floor Plan	1/8" = 1'-0"
714	15th and 16th Floor Plan	1/8" = 1'-0"
715	Roof Plan South	1/8" = 1'-0"
716	Riser Diagrams I	Not to Scale
717	Riser Diagrams II	Not to Scale
718	Detail Sheet I	Not to Scale
719	Detail Sheet II	Not to Scale
720	Detail Sheet III	Not to Scale
800	HEATING AND AIR CONDITIONING	
801	Schedule Sheet No. 1	Not to Scale
802	Schedule Sheet No. 2	Not to Scale
803	Parking Level North	1/8" = 1'-0"
804	Parking Level South	1/8" = 1'-0"
805	First Floor North	1/8" = 1'-0"
806	First Floor South	1/8" = 1'-0"
807	Second Floor North	1/8" = 1'-0"
808	Second Floor South	1/8" = 1'-0"
809	Third Floor North	1/8" = 1'-0"
810	Third Floor South	1/8" = 1'-0"
811	Roof Plan North	1/8" = 1'-0"
812	Fourth Floor Plan	1/8" = 1'-0"
813	Fifth Floor Plan	1/8" = 1'-0"
814	6th thru 12th Floor Plan	1/8" = 1'-0"
815	13th and 14th Floor Plan	1/8" = 1'-0"
816	15th and 16th Floor Plan	1/8" = 1'-0"
817	Riser Diagram No. 1	Not to Scale
818	Riser Diagram No. 2	Not to Scale
819	Detail Sheet No. 1	Not to Scale
820	Detail Sheet No. 2	Not to Scale
821	Detail Sheet No. 3	Not to Scale
822	Motor List No. 1	Not to Scale
823	Motor List No. 2	Not to Scale
824	Motor Specification Notes	Not to Scale

LIST OF DRAWINGS (Continued)

<u>Number</u>	<u>Title</u>	<u>Scale</u>
900	ELECTRICAL	
901	Symbol List	Not to Scale
902	Site Plan	1" = 20'-0"
903	Parking Level North	1/8" = 1'-0"
904	Parking Level South	1/8" = 1'-0"
905	First Floor Plan North	1/8" = 1'-0"
906	First Floor Plan South	1/8" = 1'-0"
907	Second Floor Plan North	1/8" = 1'-0"
908	Second Floor Plan South	1/8" = 1'-0"
909	Third Floor Plan North	1/8" = 1'-0"
910	Third Floor Plan South - Lighting	1/8" = 1'-0"
911	Third Floor Plan South - Power, FPA & Misc. Systems	1/8" = 1'-0"
912	Fourth Floor Plan	1/8" = 1'-0"
913	Fifth Floor Plan	1/8" = 1'-0"
914	4th thru 15th Floor Plan	1/8" = 1'-0"
915	13th and 14th Floor Plan	1/8" = 1'-0"
916	15th and 16th Floor Plan - Power, FPA and Misc. Systems	1/8" = 1'-0"
917	16th Floor Lighting and Elevator Machine Room	1/8" = 1'-0"
918	Riser Diagram Sheet No. 1	Not to Scale
919	Riser Diagram Sheet No. 2	Not to Scale
920	Riser Diagram Sheet No. 3	Not to Scale
921	Schedules and Details Sheet No. 1	Not to Scale
922	Schedules and Details Sheet No. 2	Not to Scale
923	Schedules and Details Sheet No. 3	Not to Scale
924	Schedules and Details Sheet No. 4	Not to Scale
925	Schedules and Details Sheet No. 5	Not to Scale
926	Schedules and Details Sheet No. 6	Not to Scale
927	Schedules and Details Sheet No. 7	Not to Scale

EXHIBIT D

B.R.A. DESIGN REVIEW PROCEDURE

The design review procedure for the project shall be the B.R.A. June 1967 Design Review Procedure attached hereto (4 pages).

DESIGN REVIEW PROCEDURE

URBAN DESIGN DEPARTMENT

June, 1967

Technical guide number fifteen, "Design Review in Urban Renewal", published by the Urban Renewal Administration, Washington, D. C., explains in detail the design review process. Quoting from the bulletin's introduction:

"Design advice and guidance made available to Redevelopers as part of the review process, coupled with the review itself, serves to co-ordinate individual efforts and realize the best possibilities inherent in each project. Better architecture and site planning are the most obvious results of these procedures; but benefits accrue in other ways, too: In overall visual harmony and in achieving the broad functional and livability objectives of fine urban design.

All redevelopment proposals for the Boston Redevelopment Authority's Disposition Parcels will be subject to design review and approval by the Authority prior to and subsequent to the execution of the Disposition Agreement. This review will evaluate the quality and appropriateness of the proposal on the basis of the design objectives stated in the Plan and in the special land use and building requirements stated in more detailed and refined Development Objectives and Controls prepared for this site. In addition, reference will be made during design review to the Illustrative Site Plan and other site plan and design studies prepared by the Authority Staff. Such studies shall be made available to the Redeveloper.

This review may be conducted by the Authority and its Staff, or at the discretion of the Authority, a qualified independent review panel may be selected to make design evaluations and recommendations to the Authority. The Staff member responsible for maintaining liaison with the Redeveloper's Architect will be the Director of Urban Design or a designated alternate. Formal required submissions shall be made to the Authority through the Director of Community Development.

It is expected that a continuous contact will be maintained between the Redeveloper's Architect and the Department of Urban Design during the design and working drawing process and that reasonable requests for progress prints in addition to those required below will be met at any time.

Required submission will occur at four stages in the preparation of the redevelopment proposal. Additional informal reviews at the request of either the Redeveloper or the Urban Design Staff are encouraged. A time schedule for the required submissions will be agreed upon on or before the time of execution of the Land Disposition Agreement and will be set forth therein or in a separate document. It is the intention of the Urban Design Staff that once approval has been given of a submission stage, further review will be limited to consideration of a development or refinement of previous approved submission or to new elements which were not present in previous submissions.

Since most housing submissions will also involve Federal Housing Authority review, Authority submission stages 2, 3, and 4 correspond to FHA requirements except that our emphasis is on the Urban Design aspect of the proposal. In addition, perspective drawings or a model of presentation quality are required in stage 3.

At the point where all required elements of a stage have been submitted, the Director of Urban Design will send a letter to the Redeveloper's Architect indicating either that the design submission has been reviewed and found satisfactory, or that further work is required before such approval can be given.

The four formal stages of submission follow:

1/ SCHEMATIC DESIGN

This review is intended to secure agreement on and approval of the basic design concept prior to extensive work by the Redeveloper's Architect. The Authority does not encourage submission of more than the following, which it feels is sufficient to describe the proposal.

- a/ Site plan at any appropriate scale ($1" = 100'$ and $1" = 40'$ are preferred scales); emphasizing general relationships of proposed and existing buildings, walls and open space, including that mutually defined by buildings on adjacent parcels and across streets. The general location of walks, driveways, parking, service areas, roads and major landscape features in addition to the buildings should be shown. Pedestrian and vehicular flow through the parcel and to adjacent areas shall be shown. Where relevant, site sections showing height relationships with proposed and adjacent buildings shall be provided.
- b/ Building plans, elevations, and sections at any appropriate scale, showing organization of functions and spaces. These drawings need not be more detailed than sufficient to indicate general architectural character and proposed finish materials.
- c/ Study model at $1" = 100'$ (minimum) is suggested, and may be required. However, this is not a presentation model such as that mentioned in Submission 3. Adjacent buildings, streets & buildings across streets should be included.
- d/ All sketches, diagrams, and other materials relevant to the proposal which were used by the architect during his initial study and which will help to clarify the architect's problem and his solution to it.
- e/ Written statement of proposal including: Tentative number of living units; type of building (row house, elevator apartment, etc.); size distribution of units (by number of bedrooms); number of parking spaces; community or supporting facilities provided; principal building materials; estimated rents, or carrying charges.
- f/ Proposed time schedule for the following submissions and estimated construction time.

Upon approval by the Authority of the SCHEMATIC DESIGN, the following submission is required:

2/ DESIGN DEVELOPMENT

This review is intended to secure agreement on and approval of the final design prior to extensive and detailed work on the preliminary working drawings.

This submission may correspond to the Required Application Exports for Federal Housing Authority Mortgage. A copy of Federal Housing Authority Application for Mortgage Insurance, Form 2013, and tentative Outline Specification, Form 2435, should be included in this submission.

- a/ Site Plan development of 1. a. at 1" = 40' minimum (or as determined after approval of SCHEMATIC DESIGN). Phasing possibilities, if any, shall be shown. Proposed site grading, including typical existing and proposed grades at parcel lines shall be shown. Those areas of the site proposed to be developed "by others" or easements to be provided for others shall be clearly indicated. All dimensions which may become critical from the point of view of zoning shall be indicated. Adjacent buildings, streets and buildings across streets must be indicated.
- b/ Site sections at 1" = 40' (minimum) showing vertical relationships in addition to those shown above.
- c/ Building plans, elevations, and sections developed from those of 1b. and in addition, plans and elevations of each living unit at 1/4" = 1'-0".
- d/ Study model, development of 1c. at 1" = 100' (minimum).
- e/ Written statement of proposal including: Number of living units; type of building (row house, elevator apartment, etc.); size distribution of units (by number of bedrooms); number of parking spaces; community or supporting facilities provided; structural system and principal building materials; estimated costs, rents, and operating expenses.
- f/ Perspective sketch, showing general architectural character.
- g/ Time schedule for the following submission.

Upon approval by the Authority of the DESIGN DEVELOPMENT, the following submission is required:

This review is intended to secure agreement on and approval of the character and scope of the proposal completely.

This submission should correspond to the Federal Housing Authority Required Exhibit of Preliminary Working Drawings. A copy of Form 2013 and Form 2435 (Outline Specifications) should be included in this submission.

3/ PRELIMINARY WORKING DRAWINGS AND OUTLINE SPECIFICATIONS

- a/ Site plan(s) developed in sufficient detail to describe the character and scope of the proposal completely. Without limiting the generality of this requirement, the site plan shall indicate in addition to that required in 1a. and 2a. all landscaping and site development details including walls, fences, planting, outdoor lighting, street furniture, and ground surface materials; bounding streets; points of vehicular and pedestrian access; number and type of parking facilities; utility lines and connections; existing and proposed grading and drainage; indication of proposed new paving, planting and lighting to be done by the City; existing and proposed right-of-way development and/or easements to remain. Work to be done by others should be fully described and the responsible party properly identified.
- b/ Building plans (including the roof) elevations, and sections in greater detail than required in 2c. developed in sufficient detail and at large enough scale to show all materials and assemblies comprising the buildings. All exposed mechanical equipment and vents should appear on elevations and roof plans.
- c/ Outline specifications for materials and methods of construction.

d/ Eye-level perspective sketches and/or model showing architectural and Urban Design character of the proposed project. A rendered plan showing all adjacent ; proposed and existing structures and must be submitted. All sketches, models, and other presentation materials must be an accurate representation of the proposal.

e/ Expanded statement of DESIGN DEVELOPMENT, 2e., including the following: Major building dimensions and gross area of buildings, of each unit in square feet, floor area ratio, useable open space per unit, proposed division of work between Redeveloper and public agencies; proposed financial plan. Where variances, waivers or deviations from existing City, State, or Federal regulations are proposed they shall be listed and progress toward obtaining such variances ; be stated.

f/ Time schedule for the following submission.

Upon approval by the Authority of PRELIMINARY WORKING DRAWING AND OUTLINE SPECIFICATIONS, the following submission is required

4/ FINAL WORKING DRAWINGS AND SPECIFICATIONS

This review is intended to secure final agreement on and approval of the contract documents and the complete proposal.

a/ Complete site plans for the final parcel development to working drawing level of detail. These drawings, upon approval, will serve as basic co-ordination drawing indicating scope of work and responsibilities to be performed by others.

b/ Complete working drawings and specifications ready for bidding.

c/ Statement of proposal, indicating differences, if any, from 3e.

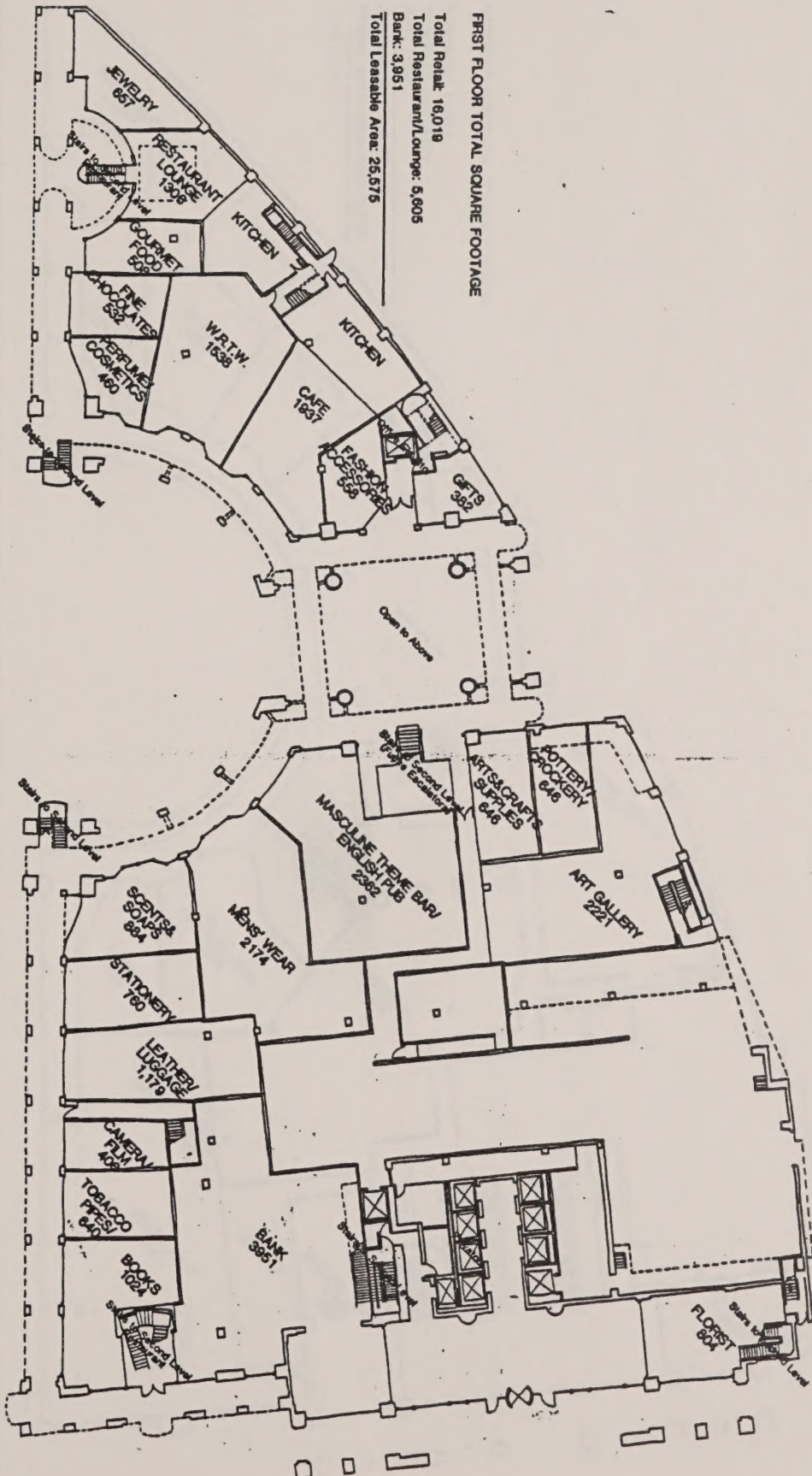
d/ Time schedule for construction of this project.

e/ Detailed financial plan including costs, rents, and operation.

Once FINAL WORKING DRAWINGS AND SPECIFICATIONS have been approved and construction started, the only items subject to an additional review will be requests for change orders in the construction. The Redeveloper is strictly required to construct the project in accordance with all details of the approved drawings. Permission to make changes from such approved drawings must be requested by the Redeveloper in writing to the Director of Urban Design who, in turn, will reply in writing, giving his approval or disapproval of the changes. No changes in the work are to be undertaken until such approval has been obtained.

FIRST FLOOR TOTAL SQUARE FOOTAGE

Total Retail: 16,018
 Total Restaurant/Lounge: 5,805
 Bank: 3,951
 Total Leasable Area: 25,575



MERCHANDISING PROGRAM
 FIRST FLOOR

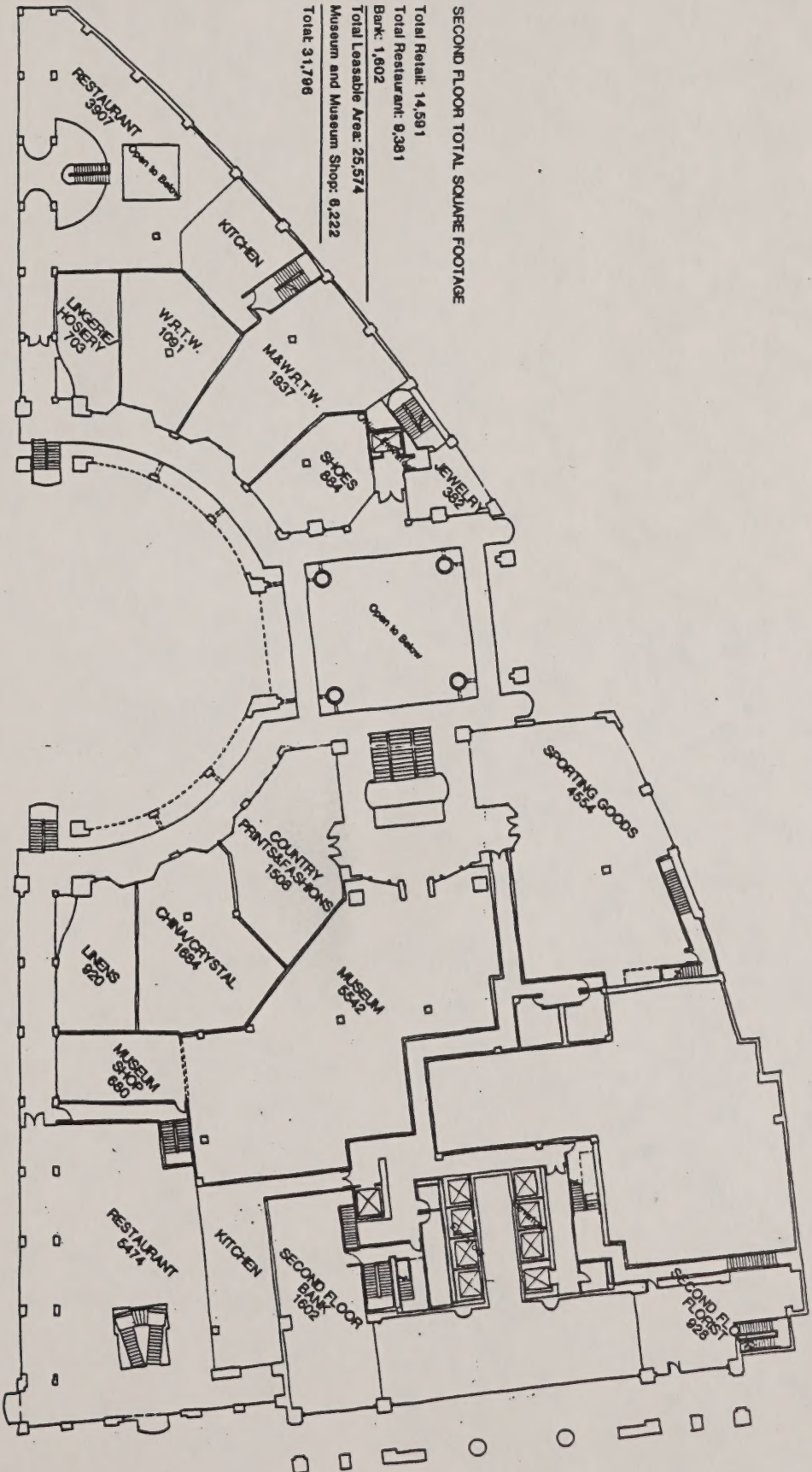
MARKETPLACE CENTER
 BOSTON, MASSACHUSETTS



Marketplace Center Associates
 WZMH Group Inc./Architects

SECOND FLOOR TOTAL SQUARE FOOTAGE

Total Retail: 14,591
 Total Restaurant: 9,381
 Bank: 1,802
 Total Leasable Area: 25,574
 Museum and Museum Shop: 8,222
 Total: 31,796



MERCHANDISING PROGRAM
 SECOND FLOOR

MARKETPLACE CENTER
 BOSTON, MASSACHUSETTS

Marketplace Center Associates
 WZMH Group Inc./Architects

